BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR BOARD OF CONTROL DECISION ON:

Statues 1980, Chapter 1143
Claim No. 3929

Directed by Statutes 2004, Chapter 227, Sections 109-110 (Sen. Bill No. 1102)

Effective August 16, 2004

Case No. 04-RL-3929-05

Regional Housing Needs Determination-Councils ***of*** *Governments*

AUTHORITIES CITED IN REBUTTAL BRIEF OF SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS, SACRAMENTO AREA COUNCIL OF GOVERNMENTS, ASSOCIATION OF BAY AREA GOVERNMENTS, CALIFORNIA ASSOCIATION OF COUNCILS OF GOVERNMENTS, *AND* SAN DIEGO ASSOCIATION OF GOVERNMENTS

HEARING DATE: March 31, 2005

Attached hereto are the following state laws:

1. Cal. Const., Art. 1 § 9
2. Cal. Const., Art. 13B § 6
3. Cal. Const., Art. 16 § 16
4. Cal. Govt. Code § 6500 ***et seq.***
5. Cal. Govt. Code § 66016
6. Cal. Govt. Code § 65104
7. Cal. Govt. Code § 65584
8. Cal. Govt. Code § 65584.1
9. Heath & Safety Code § 33670
10. Heath & Safety Code § 33678

Attached hereto is the following case:

11. Connell v. Superior Court, 59 Cal.App. 4th 382 (1997).

CALIFORNIA CONSTITUTION
ARTICLE 1 DECLARATION OF RIGHTS

SEC. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed.

Cal Const, Art XIII 5 § 6

CONSTITUTION OF THE STATE OF CALIFORNIA
ARTICLE XIII B. GOVERNMENT SPENDING LIMITATION

◆ **GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Const, Art XIII B § 6 (2004)

§ 6. Reimbursement for new programs and services

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected;

(b) Legislation defining a new crime or changing an existing definition of a crime; or

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

HISTORY:
Adopted November 6, 1979.

NOTES:
NOTE-
Stats 2004 ch 216 provides:
SEC. 34. Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-23, relating to the Standardized Testing and Reporting (STAR) program mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:
(a) Chapter 975 of the Statutes of 1995.
(b) Chapter 828 of the Statutes of 1997.
(c) Chapter 576 of the Statutes of 2000.
(d) Chapter 722 of the Statutes of 2001.

NOTE-
Stats 2004 ch 316 provides:
SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior

determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

CROSS REFERENCES:

Appropriation and payment of amount due to cities, counties and special districts for which reimbursement is required under Cal Const Art. XIII B § 6 as of June 30, 1995: Gov C § 17617.

Subvention of funds to reimburse local governments: Gov C §§ 17500 et seq.

COLLATERAL REFERENCES:

LAW REVIEW ARTICLES:

Educational financing mandates in California: reallocating the cost of educating immigrants between state and local governmental entities. 35 Santa Clara LR 367.

ATTORNEY GENERAL'S OPINIONS:

Judicial arbitration is mandated by the Legislature for municipal courts within the meaning of Cal Const., art. XIIIB, § 6 as to arbitration based upon stipulation or plaintiff election, It is also mandated within the meaning of Article XIIIB, § 6 as to "court ordered" arbitration resulting from a local court rule adopted after July 1, 1980, the effective date of Article XIIIB. Cal. Const., Art. XIIIB, § 6 contemplates that the state should provide a subvention of funds to reimburse counties for the costs of the judicial arbitration in municipal courts. Reimbursement, however, is still subject to appropriation of funds by the Legislature. 64 Ops. Cal. Atty. Gen. 261.

Commission on State Mandates does have authority to reconsider prior final decision relating to existence or nonexistence of state mandated costs, where prior decision was contrary to law. 72 Ops. Cal. Atty. Gen. 173.

NOTES OF DECISIONS

1. In General

An enactment may have an "operative" date different from its "effective" date, and does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment. It should not be given a retroactive application unless it is clear that the Legislature so intended. Thus, the construction of Cal. Const., art. XIII B, § 6, as requiring that local governments be reimbursed for costs incurred as a result of mandates enacted between January 1, 1975 and July 1, 1980, but that reimbursement did have to begin until the latter date, which was the effective date of the statute, did not constitute an impermissible retroactive operation. The provision would operate prospectively after its effective date, albeit with respect to mandates both after that date and those in effect between January 1, 1975, and that date. City of Sacramento v State of California (1984, 3rd Dist) 156 Cal APP 3d 182, 203 Cal Rptr 258 (disapproved on other grounds by County of Los Angeles v State of California, 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202) and (disapproved on other grounds by City of Sacramento v State of California, 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522).

Generally, principles of construction applicable to statutes are also applicable to constitutional provisions. Thus, in construing Cal. Const., art. XIII B, § 6, which was effective on July 1, 1980, and provided that reimbursement of local governments was required for any "new program or higher level of service" mandated by the state, but also provided that reimbursement was permissive for legislative mandates enacted prior to January 1, 1975, the proper construction was that, for legislative mandates enacted between January 1, 1975, and July 1, 1980, the "window period" of the statute, reimbursement was required but did not have to begin until the statute's effective date. This construction accorded with the rule of expressio unius est exclusio alterius--where the electorate had specified an exception to the general rule of mandatory reimbursement (prior to January 1, 1975), other exceptions were not to be implied or presumed. A construction that reimbursement was permissive for the window period would have rendered the exception for pre-1975 mandates meaningless. City of Sacramento v State of California (1984, 3rd Dist) 156 Cal App 3d 182, 203 Cal Rptr 258 (disapproved on other grounds by County of L o Angeles v State of California, 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202) and (disapproved on other grounds by City of Sacramento v State of California, 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522).

Cal. Const., art. XIII B, § 6, requiring the Legislature to reimburse local governments for expenses incurred as a result of state law, does not authorize courts to act if the Legislature fails to appropriate funds for this purpose. Although such a legislative failure might frustrate the constitutional intent, the question of whether to appropriate funds is still exclusively a matter of legislative discretion, unless the electorate directly appropriates such funds by its own vote. City of Sacramento v California State Legislature (1986, 3rd Dist). 187 Cal App 3d 393, 231 Cal Rptr 686.

The subvention provisions of Cal. Const., art. XIII B, § 6, operate so as to require the state to reimburse counties for state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January

1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the state did not have to begin reimbursement until the effective date of the amendment. Carmel Valley Fire Protection Dist. v State (1987, 2nd Dist) 190 Cal App 3d 521, 234 Cal Rptr 795.

The concepts of reimbursable state-mandated costs in Cal. Const., art. XIII B, requiring that the state reimburse local governments for the costs of state-mandated new programs or higher levels of service, and former Rev. & Tax. Code, §§ 2207, 2231, are identical. City of Sacramento v State of California (1990) 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522.

State reimbursement statute, Gov C § 17556(d) was facially constitutional because it did not create a new exception to reimbursement as required by Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 28Q Cal Rptr 92, 808 P2d 235.

Gov C § 17500-17630 was enacted to implement Cal Const Art XIII B § 6. County of Fresno v State (1991) 53 Cal 3d 482, 280 Cal Rptr 92, 808 P2d 235.

As a matter of law, no provision mandates the reimbursement of costs incurred under California Occupational Safety and Health Administration (Cal/OSHA), and thus a school district, seeking reimbursement for its expenditures complying with Cal/OSHA, had no right to reimbursement. Cal/OSHA was enacted in 1973. By its terms, Cal. Const., art. XIII B, § 6 (reimbursement to local governments for new programs and services), enacted in 1975, allows but does not require reimbursements for funds expended complying with prior legislation. Also, the Legislature enacted reimbursement provisions in 1980 (Gov. Code, § 17500 et seq.), and later repealed Rev. & Tax. Code, §§ 2207.5, 2231, also dealing with reimbursement. These legislative acts effectively preclude reimbursement for compliance with legislation enacted before 1975. Los Angeles Unified School Dist. v State of California (1991, 2nd Dist) 229 Cal App 3d 552, 280 Cal Rptr 237.

Since Cal. Const., art. XIII B, requiring subvention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. Hayes v Commission on State Mandates (1992, 3rd Dist) 11 Cal App 4th 1564, 15 Cal Rntr 2d 547.

Since the statutory scheme (Gov Code, § 17500 et seq.) for resolution of state mandate claims arising under Cal. Const., art. XIII B, § 6, contemplates that the Legislature will appropriate funds in a claims bill to reimburse an affected entity for state-mandated expenditures made prior to its enactment, the date the Legislature deletes such funds is also the point at which a nonstatutory cause of action logically accrues for the reimbursement of expenditures that are not recoverable under the statutory procedure. Berkelev Unified School Dist. v State of California (1995, 3rd Dist) 33 Cal App 4th 350, 39 Cal Rptr 2d 326.

In enacting Gov. Code, § 17500 et seq., the Legislature established the Commission on State Mandates as a quasi-judicial body to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs arising out of Cal. Const., art. XIII B, § 6. The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process, It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of Cal. Const., art. XIII B, § 6, lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establish procedures that exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal. Const., art. XIII B, § 6. Thus, the statutory scheme contemplates that the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Redevelopment Agency v California Comm'n on State Mandates (1996, 4th Dist) 43 Cal App 4th 1188.

Rules of constitutional interpretation require that constitutional limitations and restrictions

on legislative power are to be construed strictly and are not to be extended to include matters not covered by the language used. Policymaking authority is vested in the Legislature, and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation. Under these principles, there is no basis for applying Cal. Const., art. XIII B, § 6, which imposes limits on the state's authority to mandate new programs or increased services on local governmental entities, as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities. City of San Jose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr 2d 521.

Simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting "service to the public" under Cal Const Art XIII B, § 6 and Gov C § 17514. San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

4 2. Purpose

When the voters adopted Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. County of Los Angeles v State of California (1987) 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202.

The goals of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of art. XIII B, § 6, did not effect a pro tanto repeal of Cal. Const., art. XIV, § 4, which gives the Legislature plenary power over workers' compensation. County of Los Angeles v State of California (1987) 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202.

The intent of Cal. Const., art. XIII B, § 6, was to preclude the state from shifting to local agencies the financial responsibility for providing public services, in view of restrictions imposed on the taxing and spending power of local entities by Cal. Const., arts. XIII A, XIII B. Lucia Mar Unified School Dist. v Honig (1988) 44 Cal 3d 830, 244 Cal Rptr 677, 750 P2d 318.

In Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), "mandates" means "orders" or "commands," concepts broad enough to include executive orders as well as statutes. The concern that prompted the inclusion of § 6 in art. XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services that the state believed should be extended to the public. It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared. Long Beach Unified Sch. Dist. v State of California (1990, 2nd Dist) 225 Cal App 3d 155, 275 Cal Rptr 449.

Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that Cal. Const., arts. XIII A

and XIII B, impose. With certain exceptions, Cal. Const., art, XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level. Redevelopment Agency v Commission on State Mandates (1997, 4th Dist) 55 Cal App 4th 976, 64 Cal Rptr 2d 270.

The intent underlying Const Art XIII B § 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state-mandate. Local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state. City of Richmond v Commission on State Mandates (1998, 3rd Dist) 64 Cal App 4th 1190, 75 Cal Rptr 2d 754.

Intent underlying Cal Const Art XIII B § 6, was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

3. Definitions

When a word or phrase has been given a particular meaning in one part of a law, it is to be given the same meaning in other parts of the law. Thus, in the government spending limitation provisions of Cal. Const., art. XIII B, the definition of "mandate" in § 9, subd. (b), as being an enactment that directs compliance without discretion, governed with respect to § 6, which required state reimbursement of local governments for costs of state mandated programs. City of Sacramento v State of California (1984, 3rd Dist) 156 Cal App 3d 182, 203 Cal Rptr 258 (disapproved on other grounds by County of Los Angeles v State of California, 43 Gal 3d 46, 233 Cal Rptr 38, 729 P2d 202) and (disapproved on other grounds by City of Sacramento v State of California, 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522).

The word "program," as used in Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. County of Los Angeles v State of California (1987) 43 Cal 3d 46, 233 Cal Rptr 38, 729 P2d 202.

A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6, is one which carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Carmel Valley Fire Protection Dist. v State (1987, 2nd Dist) 190 Cal App 3d 521, 234 Cal Rptr 795.

In Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), "mandates" means "orders" or "commands," concepts broad enough to include executive orders as well as statutes. The concern that prompted the inclusion of § 6 in art. XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services that the state believed should be extended to the public. It is clear that the primary concern of the voters

was the increased financial burdens being shifted to local government, not the form in which those burdens appeared. Long Beach Unified Sch. Dist. v State of California (1990, 2nd Dist) 225 Cal App 3d 155, 275 Cat Rptr 449.

A "new program" within the meaning of Cal. Const., art. XIII B, § 6 (reimbursement of local governments for new programs mandated by state), is a program that carries out the governmental function of providing services to the public, or a law that, to implement state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. But no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus do not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This is true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no true choice in the manner of implementation of the federal mandate. County of Los Angeles v commission on State Mandates (1995, 2nd Dist) *32* Cal App 4th 805, *38* Cal Rptr 2d 304.

The state was not obligated to reimburse local governments by virtue of its reduction of property taxes previously allocated to local governments and its simultaneous placement of an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF) (former Rev & Tax C § 97.03) for distribution to school districts, since the reallocation of revenue did not result in reimbursable "costs" and the ERAF legislation did not amount to the imposition of a "new program or higher level of service" within the meaning of Cal Const art XIII B § 6. Section 6 subvention was intended for increases in actual costs, not lost revenue, and the state had not imposed responsibility for any program that local governments had not always had a substantial share in supporting. Nor did Proposition 98 (Cal Const art XVI § 8), providing a minimum level of funding for schools, confer a right of subvention on counties, proposition 98 merely provides the formulas for determining the minimum to be appropriated every budget year. County of Sonoma v Commission on State Mandates *(2000,* 1st Dist) 84 Cal App 4th 1264, 101 Cal Rptr 2d 784.

4. Jurisdictional Issues

The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one Purpose Of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

5. New Program Mandated

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6. Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting. Carmel Valley Fire Protection Dist. v State (1987, 2nd Dist) 190 Cal App 3d 521, 234 Cal Rptr 795.

Ed. Code, § 59300 (requiring school districts to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped), imposes on school districts a "new program or higher level of service" within the meaning of Cal. Const., art. XIII B, § 6 (providing reimbursement to local agencies for state-mandated new programs or higher levels of service). Thus, in a test case brought by school districts, the Commission on State Mandates erred in finding to the contrary; however, remand to the commission was necessary to determine whether § 59300 was a state mandate. Lucia Mar Unified School Dist. v Honig (1988) 44 Cal 3d 830, 244 Cal Rptr 677, 750 P2d 318.

Stats. 1978, ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restricting local taxation, and thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. In enacting Stats. 1978, ch. 2, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses; the alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal standards. (Disapproving, insofar as it is inconsistent with this analysis, the decision in City of Sacra-mento v. State of California (1984) 156 Cal.App.3d 182[203 Cal.Rptr. 258].) City of Sacramento v State of California (1990) 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522.

A school district was entitled to reimbursement pursuant to Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since an executive order (in the form of regulations issued by the state Department of Education) required a higher level of service and constituted a state mandate. The requirements of the order went beyond constitutional and case law requirements in that they required specific actions to alleviate segregation. Although under Cal. Const., art. XIII B, § 6, subd. (c), the state has discretion whether to reimburse pre-1975 mandates that are either statutes or executive orders implementing statutes, it cannot be inferred from this exception that reimbursability is otherwise dependent on the form of the mandate. Further, the district's claim was not defeated by Gov. Code, § 17561, 17514, limiting reimbursement to certain costs incurred after July 1, 1980, the effective date of Cal. Const., art. XIII B, since the limitations contained in those sections are confined to the exception contained in Cal. Const., art. XIII B, § 6, subd. (c). Long Beach Unified Sch. Dist. v State of California (1990, 2nd Dist) 225 Cal App 3d 155, 275 Cal Rptr 449.

The 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state-mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand of a proceeding by school districts to the Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether

those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program. Hayes v Commission on State Mandates (1992, 3rd Dist) 11 Cal App 4th 1564, 15 Cal Rptr 2d 547.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules (Welf. & Inst. Code, § 14000.2), and Medi-Cal was administered by state departments and agencies. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000 (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although Welf. & Inst. Code, § 17000, does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under Welf. & Inst. Code, § 17000. The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would have taken corrective action if it disagreed. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. Welf. & Inst. Code, § 17000, mandates that medical care be provided to indigents, and Welf. & Inst. Code, § 10000, requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing Welf. & Inst. Code, § 17000, have held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under Welf. & Inst. Code, § 17000, requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

Ed C § 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a "higher level of service" under Cal Const Art XIII B, § 6, and imposes a reimbursable state mandate for all resulting hearing costs, even those costs attributable to procedures required by federal law. San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

6. New Program Not Mandated

The provisions of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of art. XIII B, § 6. Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving City of Sacramento v. State of California (1984) 156 Cal.App.3d 182[203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.) County of Los Angeles v State of California (1987) 43 Cal 3d 46,233 Cal Rptr 38, 729 P2d 202,

In an administrative mandamus proceeding brought by a city to compel the State Board of Control to grant the city's claim to reimbursement for increased employer contribution rates to the Public Employees' Retirement System (PERS), attributable to transfers of reserve funds to a special temporary benefits fund pursuant to an act of the Legislature, the trial court properly denied the writ on the ground that such an increase was not reimbursable under Cal. Const,, art. XIII B, § 6, as a state-mandated local expense. Bearing the costs of employment is not a "service" that the city *is* required by state law to provide in its governmental function, and where such costs as pension contributions, workers' compensation insurance, and other expenses of public employment increase incidentally to legislatively imposed changes in the operation of a state agency like PERS, reimbursement of local government employers *is* not compelled by the legislative purposes of § 6 (control of excessive taxation and spending, prevention of shift of financial burdens of programs from state to local governments). City of Anaheim v State of California (1987, 2nd Dist) 189 Cal App 3d 1478, 235 Cal Rptr 101.

In a class action by a city on behalf of all local governments in the state against the state, in which it was alleged that Stats. 1978, ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, mandated a new program or higher level of service on local agencies for which reimbursement by the state was required under Cal. Const., art. XIII B, the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing such coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (former Rev. & Tax. Code, §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 17561, subd. (a)). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. The phrase, "To force programs on local governments," in the voters' pamphlet relating to Cal. Const., art. XIII B, § 6, confirmed that the intent underlying that section was to require reimbursement to local agencies for the cost involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that applied generally to all state residents and entities. City of Sacramento v State of California (1990) 50 Cal 3d 51, 266 Cal Rptr 139, 785 P2d 522.

The constitutional subvention provision (Cal. Const., art. XIII B, § 6) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the

plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate. Hayes v Commission on State Mandates (1992, 3rd Dist) 11 Cal App 4th 1564, 15 Cal Rptr 2d 547.

The trial court properly denied a writ of mandate sought by a county to compel the Commission on State Mandates to vacate its determination that Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute a state mandate, for which the state was obligated to reimburse the county pursuant to Cal. Const., art. XIII 8, § 6. The requirements of Pen. Code, § 987.9, are not state mandated. Pursuant to the federal Constitution's guaranty of the right to counsel and its due process clause (U.S. Const., 6th and 14th Amends.), the right to counsel of an indigent defendant includes the right to the use of experts to assist counsel in preparing a defense. Thus, even in the absence of Pen. Code,. § 987.9, counties would be responsible for providing ancillary services under those federal constitutional guaranties. And, even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate under Cal. Const., art. XIII B, § 6. If a local entity has alternatives under the statute other than the mandated contribution, that contribution does not constitute a state mandate. In fact, the requirements under Pen. Code, § 987.9, are not mandated by the state, but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under the statute. County of Los Angeles v Commission on State Mandates (1995, 2nd Dist) 32 Cal App 4th 805, 38 Cal Rptr 2d 304.

Gov. Code, § 29550, which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, does not establish a new program or higher level of service under Cal. Const., art. XIII B, § 6, which imposes limits on the state's authority to mandate new programs or increased services on local governmental entities, since the shift in funding is not from the State to the local entity but from county to city. At the time Gov. Code, § 29550, was enacted, and long before, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county (Goy, Code, § 29602). In this respect, counties are not considered agents of the state. Moreover, Cal. Const., art. XIII B, treats cities and counties alike as "local government." Thus, for purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike as part of "local government"; both are considered local agencies or political subdivisions of the state. Nothing in Cal. Const., art. XIII B prohibits the shifting of costs between local governmental entities. City of San lose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr 2d 521.

Gov. Code, § 29550, which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, does not shift costs so as to constitute a state "mandate" within the meaning of Cal. Const., art. XIII B, § 6, which imposes limits on the State's authority to mandate new programs or increased services on local governmental entities. The pertinent words of the statute state that "a county may impose a fee on a city." Thus, it does not require that counties impose fees on other local entities, but only authorizes them to do so. Although as a practical result of the authorization under Gov. Code, § 29550, a city is required to bear costs it did not formerly bear, a mandate cannot be read into language that is plainly discretionary. Cal. Const., art. XIII B, § 6, was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State. City of San Jose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr

2d 521.

The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its low- and moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6 (subvention). Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3. Redevelopment Agency v Commission on State Mandates (1997, 4th Dist) 55 Cal App 4th 976, 64 Cal Rptr 2d 270.

An amendment to Lab C § 4707, which eliminated local safety members of the Public Employees' Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS, so that the survivors of a local safety member of PERS who is killed in the line of duty receives both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter, did not mandate a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under Const Art XIII B § 6. The amendment addressed death benefits, not the equipment used by local safety members. Increasing the cost of providing services could not be equated with requiring an increased level of service under Const Art XIII B § 6. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public. Further, the amendment simply put local government employers on the same footing as all other nonexempt employers, requiring that they provide the workers' compensation death benefit. That the amendment affected only local government did not compel the conclusion that it imposed a unique requirement on local government. City of Richmond v Commission on State Mandates (1998, 3rd Dist) 64 Cal App 4th 1190, 75 Cal Rptr 2d 754.

Legislation requiring local redevelopment agencies to contribute to a local Educational Revenue Augmentation Fund (ERAF) did not constitute a reimbursable state mandate under Cal Const art XIIIB § 6. The ERAF legislation was, in part, an exercise of the Legislature's authority to apportion property tax revenues; the shift of a portion of redevelopment agency funds to local schools was merely the most recent adjustment in the historical fluidity of the fiscal relationship between local governments and schools. In addition, subvention is required only when the costs in question can be recovered solely from tax revenues and here the Legislature provided that a redevelopment agency's obligations for the local ERAF fund could be paid from any legally available source. City of El Monte v Commission on State Mandates (2000, 3rd Dist) 83 Cal App 4th 266, 99 Cal Rptr 2d 333.

The state was not obligated to reimburse local governments by virtue of its reduction of property taxes previously allocated to local governments and its simultaneous placement of an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF) (former Rev & Tax C § 97.03) for distribution to school districts, since the reallocation of revenue did not result in reimbursable "costs" and the ERAF legislation did not amount to the imposition of a "new program or higher level of service" within the meaning of Cal Const art XIII B § 6. Section 6 subvention was intended for increases in actual costs, not lost revenue, and the state had not imposed responsibility for any program that local governments had not always had a substantial share in supporting. Nor did Proposition 98 (Cal Const art XVI § 8), providing a minimum level of funding for schools, confer a right of subvention on counties.

Proposition 98 merely provides the formulas for determining the minimum to be appropriated every budget year. County of Sonoma v Commission on State Mandates (2000, 1st Dist) 84 Cal App 4th 1264, 101 Cal Rptr 2d 784.

Domestic violence training requirement for local police officers, pursuant to Cal. Penal Code § 13519(e), was not an unfunded mandate entitling a county to reimbursement from the state; police officers already had continuing education requirements, so any new costs were minimal. County of Los Angeles v Commission on State Mandates (2003, Cal App 2nd Dist) 2003 Cal App LEXIS 1137.

No hearing costs incurred in carrying out those expulsions that are discretionary under Ed C § 48915, including costs related to hearing procedures claimed to exceed the requirements of federal law, are reimbursable; to the extent § 48915 makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. San Diego Unified School Dist. v Cornmission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

Even if the hearing procedures set forth in Ed C § 48918 constitute a new program or higher level of service, this statute does not trigger any right to reimbursement because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis; all hearing procedures set forth in § 48918 properly should be considered to have been adopted to implement a federal due process mandate, and hence all such hearing costs are nonreimbursable under Cal Const Art XIII B § 6, and Gov C § 17557(c). San Diego Unified School Dist. v Commission on State Mandates (2004, Cal) 2004 Cal LEXIS 7079.

7. Other Issues

Under Rev. & Tax. Code, § 2231, subd. (a), requiring the state to reimburse local agencies for all costs mandated by the state, as defined in Rev. & Tax. Code, § 2207, subd. (a), defining such costs as any increased costs a local agency is required to incur as a result of any law enacted after January 1, 1973, the Legislature had a statutory duty to reimburse two counties for all state-mandated costs incurred after the 1974-75 fiscal year pursuant to Stats. 1974, ch. 1392 (Gov. Code, § 23300 et seq.) in connection with the defeat of four proposed new counties. Although Cal. Const., art, XIII B, § 6, subd. (c), approved in 1980, provided the Legislature may, but need not, reimburse local governments for costs of legislative mandates enacted prior to January 1, 1975, the Legislature in 1980 amended Rev. & Tax. Code, § 2207, thereby reaffirming its statutory obligation to reimburse local agencies for the costs defined in § 2207, subd. (a), which constituted the exercise of legislative discretion authorized by Cal. Const., art. XIII B, § 6, subd. (c). The mandatory provisions of Rev. &Tax. Code, § 2231, do not restrict legislative power, and the Legislature is free to amend or repeal it as it applies to pre-1975 legislative mandates. County of Los Angeles v State of California (1984, 2nd Dist) 153 Cal App 3d 568, 200 Cal Rptr 394.

The Legislature's initial appropriation to reimburse counties for the costs of Pen. Code, § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), was not a final and unchallengeable determination that the statute constitutes a state mandate, nor did the Commission on State Mandates err in finding that the statute is not a state mandate, despite the Legislature's finding to the contrary in a later appropriations bill. The commission was not bound by the Legislature's determination, and it had discretion to determine whether a state mandate existed. The comprehensive administrative procedures for resolution of claims arising out of Cal. Const., art. XIII B, § 6 (Gov. Code, § 17500 et seq.), are the exclusive procedures by which to implement and enforce the constitutional provision. Thus, the cornmission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Any legislative findings are irrelevant to the issue of whether a state mandate exists, and the commission properly determined that no such mandate existed. In any event, the Legislature itself ceased to regard the provisions of Pen. Code, § 987.9, as a state mandate in 1983. County of Los Angeles v Commission on State Mandates (1995, 2nd Dist) 32 Cal App 4th 805, 38 Cal Rptr 2d 304.

School districts, which sought reimbursement pursuant to Cal. Const., art. XIII B, § 6, for the costs of a state mandated desegregation program, waived their nonstatutory remedy for such costs incurred after the Legislature deleted funds in a claims bill to pay for the costs, since their statutory cause of action under Gov. Code, § 17612, accrued on that date and they could have avoided the imposition of state mandated costs at any time after that cause of action accrued by timely use of the statutory remedy. Gov. Code, § 17612, provides, as to future state mandated expenditures, an efficacious procedure for the implementation of local agency rights under Cal. Const., art. XIII B, § 6. Thus, as to such expenditures, the exercise of the constitutional right to avoid involuntary expenditures is not unduly restricted. There is no statutory remedy of reimbursement of state mandated expenditures that could have been prevented after funding has been deleted from the local government claims bill. The courts accordingly must limit the remedy for future expenditures to the procedures established by the Legislature in Gov. Code, § 17612. It follows that any claim to reimbursement of subsequent costs is waived by the failure to seek the relief provided by that statute. Berkeley Unified School Dist. v State of California *(1995,* 3rd Dist) 33 Cal App 4th 350, 39 Cal Rptr 2d 326.

The judicially created remedy to enforce the right of local entities arising under Cal. Const., art. XIII B, § 6, to reimbursement for the costs of state-mandated programs is subject to the four-year limitations period provided in Code Civ. Proc., § 343 (action for relief for which no period of limitations previously provided). Berkeley Unified School Dist. v State of California (1995, 3rd Dist) 33 Cal App 4th 350, **39** Cal Rptr 2d 326.

A cause of action by school districts for reimbursement pursuant to Cal. Const., art. XIII B, § 6, for the costs of a state-mandated desegregation program accrued, pursuant to Gov. Code, § 17612, on the date the Legislature deleted funds in a claims bill to pay for the costs, and accrual was not postponed until the statute of limitations had run on the state's right to judicial review of an administrative determination in a test claim that there was a state mandate or until final judgment in any litigation brought by the test claimant or the state. Although the administrative decision in the test claim was not yet free of direct attack, under the doctrine of exhaustion of administrative remedies, judicial interference is withheld only until the administrative process has run its course, and that had occurred when, in the test claim case, the administrative agency had approved the claim that the desegregation regulations imposed a state mandate and issued guidelines for reimbursement for the claimed expenditures from the Legislature. Gov. Code, § 17612, implies that judicial interference must be withheld until the narrowly prescribed legislative process has also run its course. It does not imply that the judicial forum is unavailable thereafter. Berkeley Unified School Dist. v State of California (1995, 3rd Dist) 33 Cal App 4th 350, 39 Cal Rptr 2d 326.

In administrative mandamus proceedings by a city's redevelopment agency against the Commission on State Mandates to challenge the commission's ruling that the agency was not entitled to reimbursement for housing costs the agency incurred (Cal. Const., art. XIII B, § 6; Gov. Code, § 17550 et seq.; Health & Saf. Code, §§ 33334.2, 33334.3), the trial court erred in denying the Department of Finance's motion to intervene. The department and the commission are not merely two agents of the state representing the same interests. Separate statutory schemes create and govern the department and the commission, and since the department is authorized to sue the commission (Gov. Code, §§ 13070, 17559), it is more like an adversary party than it is an equivalent to the commission itself. Moreover, the commission is a quasi-judicial body that hears both sides of the dispute. In light of the department's right to notice and participation in the administrative hearings before the commission, and in light of its duty to supervise the financial policies of the state (Gov. Code, § 13070), the relief requested by the agency, subvention of state funds, would have affected the interests of the department. Thus, the department was a real party in interest, and should have been named in the agency's writ Petition. It was an indispensable party under Code Civ. Proc., § 389, subd. (a), and it had an interest against the success of the agency on its subvention claim (Code Civ. Proc., § 387, subd. (a)). Also, a ruling in the department's absence could have impaired its ability to protect its interests in the subject matter of the action (Code Civ. Proc., § 387, subd. (b)). Redevelopment Agency v California Comm'n on State Mandates (1996, 4th Dist) 43 Cal App 4th 1188.

The Legislative Counsel's determination that Gov. Code, § 29550, which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, imposed a state mandated local program was not determinative of the ultimate issue whether the enactment constituted a state mandate under Cal. Const., art. XIII B, § 6. The legislative scheme contained in Gov. Code, § 17500 et seq., makes clear that this issue is to be decided by the State Commission on Mandates. The statutory scheme contemplates that the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists. City of San Jose v State of California (1996, 6th Dist) 45 Cal App 4th 1802, 53 Cal Rptr 2d 521.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under Code Civ. Proc., § 1085, was not an improper vehicle for challenging the commission's position. Mandamus under Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under Code Civ. Proc., § 1085, as one brought under Code Civ. Proc., § 1094.5, and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. County of San Diego v State of California (1997) 15 Cal 4th 68, 61 Cal Rptr 2d 134, 931 P2d 312.

CALIFORNIA CONSTITUTION
ARTICLE **16** PUBLIC FINANCE

SEC. **16.** All property in a redevelopment project established under the Community Redevelopment Law as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of that ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and those taxes (the word "taxes" as used herein includes, but is not limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, ***so*** levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of those taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for those taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after the ordinance's effective date, the assessment roll of the county last equalized on the effective date of that ordinance shall be used in determining the assessed valuation of the taxable property in the project on that effective date); and

(b) Except as provided in subdivision (c), that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in the project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) That portion of the taxes identified in subdivision (b) which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property

shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This paragraph shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January **1, 1989.**

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes identified in subdivision (b), exclusive of that portion identified in subdivision (c), may be irrevocably pledged for the payment of the principal of and interest on those loans, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

The Legislature shall enact those laws as may be necessary to enforce the provisions of this section.

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 6500-6534

6500. As used in this article, "public agency" includes, but is not limited to, the federal **government** or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, or any joint powers authority formed pursuant to this article by any of these agencies.

6500.1. This chapter shall be known and may be cited as the Joint Exercise of Powers Act.

6501. This article does not authorize any state officer, board, commission, department, or other state agency or institution to make any agreement without the approval of the Department of General Services or the Director of General Services if such approval is required by law.

6502. If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies may be located outside this state.

It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised. For purposes of this section, two or more public agencies having the power to conduct agricultural, livestock, industrial, cultural, or other fairs or exhibitions shall be deemed to have common power with respect to any such fair or exhibition conducted by any one or more of such public agencies or by an entity created pursuant to a joint powers agreement entered into by such public agencies.

6502.5. In addition to any power common to its member districts, the Resource Conservation Energy Joint Powers Agency has the authority to finance, construct, install, and operate projects for the production of biogas and electricity from the digestion or fermentation of animal or agricultural waste. The agency may undertake these projects within its jurisdiction or outside its jurisdiction. The authority to undertake projects outside the jurisdiction of the agency is limited to the geographical areas of Fresno, Kings, Madera, Merced, San Joaquin, and Tulare Counties.

Prior to undertaking a project authorized by this section outside the jurisdiction of the agency, the agency shall obtain approval of the board of supervisors of the county in which the project is to be located.

6502.7. (a) If authorized by their legislative or other governing bodies, two or more public agencies which have the authority to identify, plan for, monitor, control, regulate, dispose of, or abate liquid, toxic, or hazardous wastes or hazardous materials may, by agreement, jointly exercise any of these powers common to the contracting parties.

(b) The contracting parties may provide special services, including persons specially trained, experienced, expert, and competent to perform these special services.

(c) The provisions of this section are declaratory of existing law and do not limit any authority which already exists.

6503. The agreements shall state the purpose of the agreement or the power to be exercised. They shall provide for the method by which the purpose will be accomplished or the manner in which the power will be exercised.

6503.1. (a) When property tax revenues of a county of the second class are allocated by that county to an agency formed for the purpose of providing fire protection pursuant to this chapter, those funds may only be appropriated for expenditure by that agency for fire protection purposes.

(b) As used in this section, "fire protection purposes" means those purposes directly related to, and in furtherance of, providing fire prevention, fire suppression, emergency medical services, hazardous materials response, ambulance transport, disaster preparedness, rescue services, and related administrative costs.

(c) This section shall not be interpreted to alter any provision of law governing the processes by which cities or counties select providers of ambulance transport services.

6503.5. Whenever a joint powers agreement provides for the creation of an agency or entity which is separate from the parties to the agreement and is responsible €or the administration of the agreement, such agency or entity shall, within **30** days after the effective date of the agreement or amendment thereto, cause a notice of the agreement or amendment to be prepared and filed with the office of the Secretary of State. Such notice shall contain:

(a) The name of each public agency which is a party to the agreement.

(b) The date upon which the agreement became effective.

(c) A statement of the purpose of the agreement or the power to be exercised.

(d) A description of the amendment or amendments made to the agreement, if any.

Notwithstanding any other provision of this chapter, any agency or entity administering a joint powers agreement or amendment to such an agreement, which agreement or amendment becomes effective on or after the effective date of this section, which fails to file the notice required by this section within **30** days after the effective date of the agreement or amendment, shall not thereafter, and until such filings are completed, issue any bonds or incur indebtedness of any kind.

6503.7. Within 90 days after the effective date of this section, any separate agency or entity constituted pursuant to a joint powers agreement entered into prior to the effective date of this section and responsible for the administration of such agreement, shall cause a notice of the agreement to be prepared and filed with the office of the Secretary of State. Such notice shall contain all the information required for notice given pursuant to Section 6503.5.

Notwithstanding any other provision of this chapter, any joint powers agency which is required and fails to file notice pursuant to this section within 90 days after the effective date of this section, shall not, thereafter, and until such filings are completed, issue any bonds, incur any debts, liabilities or obligations of any kind, or in any other way exercise any of its powers.

For purposes of recovering the costs incurred in filing and processing the notices required to be filed pursuant to this section and Section 6503.5, the Secretary of State may establish a schedule of fees. Such fees shall be collected by the office of the Secretary of State at the time the notices are filed and shall not exceed the reasonably anticipated cost to the Secretary of State of performing the work to which the fees relate.

6504. The parties to the agreement may provide that (a) contributions from the treasuries may be made for the purpose set forth in the agreement, (b) payments of public funds may be made to defray the cost of such purpose, (c) advances of public funds may be made for the purpose set forth in the agreement, such advances to be repaid as provided in said agreement, or (d) personnel, equipment or property of one or more of the parties to the agreement may be used in lieu of other contributions or advances. The funds may be paid to and disbursed by the agency or entity agreed upon, which may include a nonprofit corporation designated by the agreement to administer or execute the agreement for the parties to the agreement.

6505. (a) The agreement shall provide for strict accountability of all funds and report of all receipts and disbursements.

(b) In addition, and provided a separate agency or entity is created, the public officer performing the functions of auditor or controller as determined pursuant to Section 6505.5, shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every agency or entity, except that the officer need not make or contract €or the audit in any case where an annual audit of the accounts and records of the agency or entity by a certified public accountant or public accountant is otherwise made by any agency of the state or the United States only as to those accounts and records which are directly subject to such a federal or state audit. In each case the minimum requirements of the audit shall be those prescribed by the Controller for special districts under Section 26909 and shall conform to generally accepted auditing standards.

(c) When an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the contracting parties to the agreement and also with the county auditor of the county where the

home office of the joint powers authority is located and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. The report shall be filed within **12** months of the end of the fiscal year or years under examination.

(d) When a nonprofit corporation is designated by the agreement to administer or execute the agreement and no public officer is required to perform the functions of auditor or controller as determined pursuant to Section 6505.5, an audit of the accounts and records of the agreement shall be made at least once each year by a certified public accountant or public accountant, and a report thereof shall be filed as a public record with each of the contracting parties to the agreement and with the county auditor of the county where the home office of the joint powers authority is located, and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. These reports shall be filed within **12** months after the end of the fiscal year or years under examination.

(e) Any costs of the audit, including contracts with, or employment of certified public accountants or public accountants, in making an audit pursuant to this section shall be borne by the agency or entity and shall be a charge against any unencumbered funds of the agency or entity available for the purpose.

(f) All agencies or entities may, by unanimous request of the governing body thereof, replace the annual special audit with an audit covering a two-year period.

(g) Notwithstanding the foregoing provisions of this section to the contrary, agencies or entities shall be exempt from the requirement of an annual audit if the financial statements are audited by the Controller to satisfy federal audit requirements.

6505.1. The contracting parties to an agreement made pursuant to this chapter shall designate the public office or officers or person or persons who have charge of, handle, or have access to any property of the agency or entity and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the contracting parties.

6505.5. If a separate agency or entity is created by the agreement, the agreement shall designate the treasurer of one of the contracting parties, or in lieu thereof, the county treasurer of a county in which one of the contracting parties is situated, or a certified public accountant to be the depositary and have custody of all the money of the agency or entity, from whatever source.

The treasurer or certified public accountant so designated shall do all of the following:

(a) Receive and receipt for all money of the agency or entity and place it in the treasury of the treasurer so designated to the credit of the agency or entity.

(b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all agency or entity money so held by him or her.

(c) Pay, when due, out of money of the agency or entity held by him or her, all sums payable on outstanding bonds and coupons of the agency or entity.

(d) Pay any other sums due from the agency or entity from agency

or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement.

(e) Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the agreement the amount of money he or she holds for the agency or entity, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The officer performing the functions of auditor or controller shall be of the same public agency as the treasurer designated as depositary pursuant to this section. However, where a certified public accountant has been designated as treasurer of the entity, the auditor of one of the contracting parties or of a county in which one of the contracting parties is located shall be designated as auditor of the entity. The auditor shall draw warrants to pay demands against the agency or entity when the demands have been approved by any person authorized to so approve in the agreement creating the agency or entity.

The governing body of the same public entity as the treasurer and auditor specified pursuant to this section shall determine charges to be made against the agency or entity for the services of the treasurer and auditor. However, where a certified public accountant has been designated as treasurer, the governing body of the same public entity as the auditor specified pursuant to this section shall determine charges to be made against the agency or entity for the services of the auditor.

6505.6. In lieu of the designation of a treasurer and auditor as set forth in Section *6505.5,* the agency or entity may appoint one of its officers or employees to either or both of such positions. Such offices may be held by separate officers or employees or combined and held by one officer or employee. Such person or persons shall comply with the duties and responsibilities of the office or offices as set forth in subdivisions (a) to (d), inclusive, of Section *6505.5.*

In the event the agency **or** entity designates its officers or employees to fill the functions of treasurer or auditor, or both, pursuant to this section, such officers or employees shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section *6505.*

6506. The agency or entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement or a commission or board constituted pursuant to the agreement or a person, firm or corporation, including a nonprofit corporation, designated in the agreement. One or more of the parties may agree to provide all or a portion of the services to the other parties in the manner provided in the agreement. The parties may provide for the mutual exchange of services without payment of any consideration other than such services.

6507. For the purposes of this article, the agency is a public entity separate from the parties to the agreement.

6508. The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. If the agency is not one or more of the parties to the agreement but is a public entity, commission or board constituted pursuant to the agreement and such agency is authorized, in its own name, to do any or all of the following: to make and enter contracts, or to employ agents and employees, or to acquire, construct, manage, maintain or operate any building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations, said agency shall have the power to sue and be sued in its own name. Any authorization pursuant to the agreement for the acquisition by the agency of property for the purposes of a project for the generation or transmission of electrical energy shall not include the condemnation of property owned or otherwise subject to use or control by any public utility within the state.

The governing body of any agency having the power to sue or be sued in its own name, created by an agreement entered into after the amendment to this section at the **1969** Regular Session of the Legislature, between parties composed exclusively of parties which are cities, counties, or public districts of this state, irrespective of whether all such parties fall within the same category, may as provided in such agreement, and in any ratio provided in the agreement, be composed exclusively of officials elected to one or more of the governing bodies of the parties to such agreement. Any existing agreement composed of parties which are cities, counties or public districts which creates a governing board of any agency having the power to sue or be sued may, at the option of the parties to the agreement, be amended to provide that the governing body of the created agency shall be composed exclusively of officials elected to one or more of the governing boards of the parties to such agreement in any ratio agreed to by the parties to the agreement. The governing body so created shall be empowered to delegate its functions to an advisory body or administrative entity for the purposes of program development, policy formulation, or program implementation, provided, however, that any annual budget of the agency to which the delegation is made must be approved by the governing body of the Joint Powers Agency.

In the event that such agency enters into further contracts, leases or other transactions with one or more of the parties to such agreement, an official elected to the governing body of such party may also act in the capacity of a member of the governing body of such agency.

6508.1. If the agency is not one or more of the parties to the agreement but is a public entity, commission, or board constituted pursuant to the agreement, the debts, liabilities, and obligations of the agency shall be debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise.

A party to the agreement may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the agency.

6509. Such power is subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement.

6509.5. Any separate agency or entity created pursuant to this chapter shall have the power to invest any money in the treasury pursuant to Section 6505.5 that is not required for the immediate necessities of the agency or entity, as the agency or entity determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the **Government Code.**

If a nonprofit corporation is designated by the agreement to administer or execute the agreement for the parties to the agreement, it shall invest any moneys held for disbursement on behalf of the parties in the same manner and upon the same conditions as local agencies pursuant to Section 53601.

6509.7. (a) Notwithstanding any other provision of law, two or more public agencies that have the authority to invest funds in their treasuries may, by agreement, jointly exercise that common power. Funds invested pursuant to an agreement entered into under this section may be invested as authorized by subdivision (o) of Section 53601. A joint powers authority formed pursuant to this section may issue shares of beneficial interest to participating public agencies.

Each share shall represent an equal proportionate interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares of beneficial interest shall have retained an investment adviser that meets all of the following criteria:

(1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.

(2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (n), inclusive, **of** Section 53601.

(3) The adviser has assets under management in excess of five hundred million dollars ($500,000,000).

(b) As used in this section, "public agency" includes a nonprofit corporation whose membership is confined to public agencies or public officials, in addition **to** those agencies listed in Section **6500**.

6510. The agreement may be continued for a definite term or until rescinded or terminated. The agreement may provide for the method by which it may be rescinded or terminated by any party.

6511. The agreement shall provide for the disposition, division, or distribution of any property acquired as the result of the joint exercise of powers.

6512. The agreement shall provide that after the completion of its purpose, any surplus money on hand shall be returned in proportion to the contributions made.

6512.1. If the purpose set forth in the agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide (a) for the repayment or return to the parties of all or any part of any contributions, payments or advances made by the parties pursuant to Section 6504 and (b) for payment to the parties of any sum or sums derived from the revenues of said facilities. Payments, repayments or returns pursuant to this section shall be made at the time and in the manner specified in the agreement and may be made at any time on or prior to the rescission or termination of the agreement or the completion of the purpose of the agreement.

6512.2. If the purpose set forth in the agreement is to pool the self-insurance claims of two or more local public entities, the agreement may provide that termination by any party to the agreement shall not be construed as a completion of the purpose of the agreement and shall not require the repayment or return to the parties of all or any part of any contributions, payments, or advances made by the parties until the agreement is rescinded or terminated as to all parties. If the purpose set forth in the agreement is to pool the self-insurance claims of two or more local public entities, it shall not be considered an agreement for the purposes **of** Section 895.2, provided that the agency responsible for carrying out the agreement is a member of the pool and the pool purchases insurance or reinsurance to cover the activities of that agency in carrying out the purposes of the agreement. The agreement may provide that after the completion of its purpose, any surplus money remaining in the pool shall be returned in proportion to the contributions made and the claims or losses paid.

6513. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this article.

6514. Any state department or agency concerned with the provisions of services or facilities to mentally retarded persons and their families may enter into agreements under this chapter.

6514.5. Any public agency may enter into agreements with other state agencies pursuant to the provisions of Section 11256.

6515. In addition to other powers, any agency, commission or board

provided for by a joint powers agreement entered into pursuant to Article 1 (commencing with Section 6500) of this chapter between an irrigation district and a city, if such entity has the power to acquire, construct, maintain or operate systems, plants, buildings, works and other facilities and property for the supplying of water for domestic, irrigation, sanitation, industrial, fire protection, recreation or any other public or private uses, may issue revenue bonds pursuant to the Revenue Bond Law of 1941 (commencing with Section 54300) to pay the cost and expenses of acquiring, constructing, improving and financing a project for any or all of such purposes.

Upon the entity adopting the resolution referred to in Article 3 (commencing with Section 54380) the irrigation district and the city shall implement the same by each conducting the election in its own territory. The proposition authorizing the bonds shall be deemed adopted if it receives the affirmative vote of a majority of all the voters voting on the proposition within the entity.

The provisions of this section shall be of no further force and effect after December 31, 1973, unless the entity is unable to accomplish the purpose of this section by reason of litigation, in which case this section shall continue to be effective until the final determination of such litigation and for one year thereafter.

6516. Public agencies conducting agricultural, livestock, industrial, cultural, or other types of fairs or exhibitions may enter into a joint powers agreement to form an insurance pooling arrangement for the payment of workers' compensation, unemployment compensation, tort liability, public liability, or other losses incurred by those agencies. An insurance and risk pooling arrangement formed in accordance with a joint powers agreement pursuant to this section is not subject to Section 11007.7 of the **Government Code.** The Department of Food and Agriculture may enter into such a joint powers agreement for the California Exposition and State Fair, district agricultural associations, or citrus fruit fairs, and the department shall have authority to contract with the California Exposition and State Fair, district agricultural associations, or citrus fruit fairs with respect to such a joint powers agreement entered into on behalf of the California Exposition and State Fair, district agricultural association, or citrus fruit fair. Any county contracting with a nonprofit corporation to conduct a fair pursuant to Sections 25905 and 25906 of the **Government Code** may enter into such a joint powers agreement for a fair conducted by the nonprofit corporation, and shall have authority to contract with a nonprofit corporation with respect to such a joint powers agreement entered into on behalf of the fair of the nonprofit corporation.

Any county contracting with a nonprofit corporation to conduct a fair shall assume all workers' compensation and liability obligations accrued prior to the dissolution or nonrenewal of the nonprofit corporation's contract with the county.

Any public entity entering into a joint powers agreement under this section shall establish or maintain a reserve fund to be used to pay losses incurred under the agreement. The reserve fund shall contain sufficient moneys to maintain the fund on an actuarially sound basis.

6516.3. Notwithstanding any other provision of law, a joint powers

agency established in Orange County pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) of this chapter or Article 4 (commencing with Section 6584) of this chapter, in order to purchase obligations of local agencies or make loans to local agencies, which moneys the local agencies are hereby authorized to borrow, to finance the local agencies' unfunded actuarial pension liability or to purchase, or to make loans to finance the purchase of, any obligations arising out of any delinquent assessments or taxes levied on the secured roll by the local agencies, the county, or any other political subdivision of the state. Notwithstanding any other provision of law, including Section 53854 or subdivision (d) of Section 4705 of the Revenue and Taxation **Code**, the joint powers agency bonds and the local agency obligations or loans, if any, shall be repaid in the time, manner and amounts, with interest, security, and other terms as agreed to by the county or the local agency and the joint powers authority.

6516.5. Notwithstanding any other provision of law, a joint powers agency provided for by a joint powers agreement pursuant to Article 1 (commencing with Section **6500)** of this chapter may create risk pooling arrangements for the payment of general liability losses incurred by participants and exhibitors in fair sponsored programs and special events users of fair facilities, provided that the aggregate payments made under each program shall not exceed the amount available in the pool established for that program.

6516.6. (a) Notwithstanding any other provision of law, a joint powers agency established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase obligations of local agencies or make loans to local agencies, which moneys the local agencies are hereby authorized to borrow, to finance the local agencies' unfunded actuarial pension liability or to purchase, or to make loans to finance the purchase of, delinquent assessments or taxes levied on the secured roll by the local agencies, the county, or any other political subdivision of the state. Notwithstanding any other provision of law, including Section 53854, the local agency obligations or loans, if any, shall be repaid in the time, manner and amounts, with interest, security, and other terms as agreed to by the local agency and the joint powers authority.

(b) Notwithstanding any other provision of law, a joint powers authority established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase or acquire, by sale, assignment, pledge, or other transfer, any or all right, title, and interest **of** any local agency in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency and placed for collection on the secured, unsecured, or supplemental property tax rolls. Local agencies, including, cities, counties, cities and counties, school districts, redevelopment agencies, and all other special districts that are authorized by law to levy property taxes on the county tax rolls, are hereby authorized to sell, assign,

pledge, or otherwise transfer to a joint powers authority any or all of their right, title, and interest in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency for collection on the secured, unsecured, or supplemental property tax rolls in accordance with the terms and conditions that may be set forth in an agreement with a joint powers authority.

(c) Notwithstanding Division 1 (commencing with Section 50) of the Revenue and Taxation **Code**, upon any transfer authorized in subdivision (b), the following shall apply:

(1) A local agency shall be entitled to timely payment of all delinquent taxes, assessments, and other receivables collected on its behalf on the secured, unsecured, and supplemental tax rolls, along with all penalties, interest, costs, and other charges thereon, no later than 30 calendar days after the close of the preceding monthly or four-week accounting period during which the delinquencies were paid by or on account of any property owner.

(2) Upon its receipt of the delinquent taxes, assessments, and receivables that it had agreed to be transferred, a local agency shall pay those amounts, along with all applicable penalties, interest, costs, and other charges, to the joint powers authority in accordance with the terms and conditions that may be agreed to by the local agency and the joint powers authority.

(3) The joint powers authority shall be entitled to assert all right, title, and interest of the local agency in the enforcement and collection of the delinquent taxes, assessments, and receivables, including without limitation, its lien priority, its right to receive the proceeds of delinquent taxes, assessments, and receivables, and its right to receive all penalties, interest, administrative costs, and any other charges, including attorney fees and costs, if otherwise authorized by law to be collected by the local agency.

(4) (A) For any school district that participates in a joint powers authority using financing authorized by this section and that does not participate in the alternative method of distribution of tax levies under Chapter 3 of Division 1 of Part 8 of the Revenue and Taxation **Code**, the amount of property tax receipts to be reported in a fiscal year for the district under subdivision (f) of Section 75.70 of the Revenue and Taxation **Code**, or any other similar law requiring reporting of school district property tax receipts, shall be equal to 100 percent of the school district's allocable share of the taxes distributed to it for the then fiscal year, plus 100 percent of the school district's share of any delinquent secured and supplemental property taxes assigned from that year and 100 percent of its share of any delinquent secured and supplemental property taxes from any prior years which the school district has assigned to a joint powers authority in that fiscal year, as such delinquent taxes are shown on the delinquent tax roll prescribed by Section 2627 of the Revenue and Taxation **Code**, on an abstract list if one is kept pursuant to Chapter 4 (commencing with Section 4372) of Part 7 of Division 1 of the Revenue and Taxation **Code**, or other records maintained by the county, plus all other delinquent taxes that the school district has not assigned to a joint powers authority which are collected and distributed to the school district as otherwise provided by law, less any reduction amount required by subparagraph (B). One hundred percent of the school district's allocable share of the delinquent taxes assigned for the current fiscal year, and 100 percent of the school district's allocable share of the delinquent taxes assigned for all years prior thereto, as shown on the delinquent roll, abstract list, or other records maintained by the county, whether or

not those delinquent taxes are ever collected, shall be paid by the joint powers authority to the county auditor and shall be distributed to the school district by the county auditor in the same time and manner otherwise specified for the distribution of tax revenues generally to school districts pursuant to current law. Any additional amounts shall not be so reported and may be provided directly to a school district by a joint powers authority.

(B) When a joint powers authority finances delinquent taxes for a school district pursuant to this section, and continuing as long as adjustments are made to the delinquent taxes previously assigned to a joint powers authority, the school district's tax receipts to be reported as set forth in subparagraph (A) shall be reduced by the amount of any adjustments made to the school district's allocable share of taxes shown on the applicable delinquent tax roll, abstract list, if one is kept, or other records maintained by the county, occurring for any reason whatsoever other than redemption, which reduce the amount of the delinquent taxes assigned to the joint powers authority.

(C) A joint powers authority financing delinquent school district taxes and related penalties pursuant to this subdivision shall be solely responsible for, and shall pay directly to the county, all reasonable and identifiable administrative costs and expenses of the county which are incurred as a direct result of the compliance of the county tax collector or county auditor, or both, with any new or additional administrative procedures required for the county to comply with this subdivision. Where reasonably possible, the county shall provide a joint powers authority with an estimate of the amount of and basis for any additional administrative costs and expenses within a reasonable time after written request for an estimate.

(D) In no event shall the state be responsible or liable for a joint powers authority's failure to actually pay the amounts required by subparagraphs (A) and (B), nor shall a failure constitute a basis for a claim against the state by a school district, county, **or** joint powers authority.

(E) The phrase "school district," as used in this section, includes all school districts of every kind or class, including, without limitation, community college districts and county superintendents of school.

(d) The powers conferred by this section upon joint powers authorities and local agencies shall be complete, additional, and cumulative to all other powers conferred upon them by law. Except as otherwise required by this section, the agreements authorized by this section need not comply with the requirements of any other laws applicable to the same subject matter.

(e) ***An*** action to determine the validity of any bonds issued, any joint powers agreements entered into, any related agreements, including, without limitation, any bond indenture or any agreements relating to the sale, assignment, or pledge entered into by a joint powers authority or a local agency, the priority of any lien transferred in accordance with this section, and the respective rights and obligations of any joint powers authority and any party with whom the joint powers authority may contract pursuant to this chapter, may be brought by the joint powers authority pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the **Code** of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

(f) This section shall not be construed to affect the manner in which an agency participates in or withdraws from the alternative distribution method established by Chapter **3** (commencing with Section 4701) of Part 8 of Division 1 of the Revenue and Taxation **Code.**

6516.7. One or more public agencies and one or more private entities that provide child care or operate child day care facilities, as defined in Section 1596.750 of the Health and Safety **Code,** may enter into a joint powers agreement to form an insurance pooling arrangement €or the payment of unemployment compensation or tort liability losses incurred by these public and private entities

A joint powers agency or entity formed pursuant to this section may not elect to finance unemployment insurance coverage under Article 5 (commencing with Section 801) of Chapter 3 of Part **1** of Division 1 of the Unemployment Insurance **Code** unless each member entity individually satisfies the requirements set forth in Section 801 or 802 of the Unemployment Insurance **Code.**

Either a public agency or private entity entering into a joint powers agreement under this section shall establish or maintain a reserve fund to be used to pay losses incurred under the agreement. The reserve fund shall contain sufficient moneys to maintain the fund on an actuarially sound basis.

6516.8. Any two or more harbor agencies may establish a joint powers authority pursuant to Part **1** (commencing with Section 1690) of Division 6 of the Harbors and Navigation **Code.**

6516.9. Notwithstanding any other provision of law, a joint powers agency or entity provided for by a joint powers agreement pursuant to this article, the members of which may conduct agricultural, livestock, industrial, cultural, or other types of fairs and exhibitions, or educational programs and activities, may establish and administer risk pooling arrangements for the payment of liability losses, workers' compensation losses, and other types of losses incurred by members of the joint powers agency or entity and by nonprofit corporations conducting or benefiting agricultural, livestock, industrial, cultural, or other types of fairs and exhibitions, or educational programs and activities, and by members of the joint powers agency or entity and by nonprofit corporations or auxiliary organizations operating facilities, programs, or events at public schools, the California Community Colleges, the California State University, or the University of California. For purposes of this section, one or more public agencies and one or more nonprofit corporations or auxiliary organizations operating facilities, programs, or events at public schools, the California Community Colleges, the California State University, or the University of California may enter into a joint powers agreement. The joint powers agency or entity may provide the nonprofit corporations with any services or nonrisk pooling programs provided to the agency's or entity's members. Aggregate payments made under each risk pooling arrangement shall not exceed the amount available in the pool established for that arrangement. The joint powers agency or entity may establish and administer as many separate risk pooling arrangements as it deems desirable. A liability risk pooling arrangement established pursuant to this section also may provide for the payment of losses incurred by special events users, lessees, and licensees of facilities operated by nonprofit corporations,

auxiliary organizations, public schools, the California Community Colleges, the California State University, or the University of California and for the payment of losses incurred by employees, participants and exhibitors in programs sponsored by those entities.

6517. (a) Notwithstanding any other provision of this chapter, the Department of General Services may enter into a joint powers agreement with any other public agency for the purpose of creating an agency or entity to finance the acquisition of land and the design and construction of state office buildings and parking facilities thereon. The joint powers agency or entity shall have the power to acquire land and construct office and parking facilities and to issue revenue bonds for these purposes.

(b) The department may lease state property to, and enter into a lease-purchase agreement with, the joint powers agency or entity on behalf of the State of California for terms not exceeding 50 years. The lease may contain any other terms and conditions which the Director of the Department of General Services determines to be in the best interests of the state.

(c) Any joint powers agreement and any agreement between the state and any joint powers agency or entity created pursuant to this section shall be submitted to the Legislature for approval through the budgetary process before execution.

(d) This section shall not apply to or in any way limit the powers of any authority authorized under Section 8169.4.

6517.5. (a) Notwithstanding any other provision of this chapter, the Community Redevelopment Agency of the City of Los Angeles may advance funds, not to exceed four million dollars ($4,000,000), to the Department of General Services and the Los Angeles State Office Building Authority to complete plans and prepare bid specifications and related documents for a proposed state office building to be located in the City of Los Angeles between Spring Street, Main Street, Third Avenue, and Fourth Street, subject to the requirements of this section.

(b) The department or the authority shall make a determination on whether to proceed with construction of the state office building by June 30, 1987.

(c) If the department or the authority determines not to proceed with construction of the state office building, the department shall reimburse the agency by December 31, 1987, from the Special Fund for Capital Outlay, for any and all funds advanced by the agency to the department or to the authority for completing plans, preparing bid documents, and taking other actions, including the employment of legal counsel, relating to the design development phase, construction document phase, and bidding phase for the state office building.

(d) If the department or the authority determines to proceed with construction of the state office building, the agency shall be reimbursed for any and all funds advanced by the agency from the bond proceeds or from other financing available for construction of the state office building.

(e) The authority may acquire, own, construct, and operate parking facilities to serve the state office building, as the authority may deem to be in the best interests of the people of the State of California.

(f) The department and the agency may amend the authority

agreement to provide for longer terms of office and to remove the restrictions on the number of terms for the members of the governing board of the authority, as the department and agency may deem appropriate.

(g) As used in this section, "funds advanced by the agency" means the principal amount of the agency's advance.

6517.6. (a) **(1)** Notwithstanding any provision of this chapter, the Department of General Services may enter into a joint powers agreement with any other public agency to finance the acquisition of real property authorized by Section 14015 and all costs incidental or related thereto. The joint powers agency or entity shall have the power to acquire office and parking facilities and to issue certificates of participation as determined by the Treasurer in accordance with Section 14015.

(2) Upon the request of the department, the Treasurer is hereby further authorized to serve as treasurer of the joint powers agency established pursuant to this section and to serve as trustee or fiscal agent for the certificates of participation.

(3) The department may lease property from, and enter into an agreement with, the joint powers agency or entity created pursuant to subdivision (a) to purchase real property and improvements thereon on behalf of the state for terms not exceeding 25 years.

(4) The department shall provide the Legislature with a 30-day notification of intent to advertise for proposals pursuant to this section. The department shall further provide the Legislature and the California Transportation Commission with notification of intent to acquire the real property **30** days prior to the acquisition.

(b) Following the acquisition and occupation of the real property being acquired, the Department of Transportation shall sell or cause to be sold the exisiting office building located at 150 Oak Street in the City and County of San Francisco. The proceeds of the sale shall be deposited in the State Highway Account in the State Transportation Fund to be used to reduce the amount to finance the acquired facility.

6518. (a) A joint powers agency, without being subject to any limitations of any party to the joint powers agreement pursuant to Section 6509, may also finance or refinance the acquisition or transfer of transit equipment or transfer federal income tax benefits with respect to any transit equipment by executing agreements, leases, purchase agreements, and equipment trust certificates in the forms customarily used by a private corporation engaged in the transit business to effect purchases of transit equipment, and dispose of the equipment trust certificates by negotiation or public sale upon terms and conditions authorized by the parties to the agreement. Payment for transit equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates payable from any source or sources of funds specified in the equipment trust certificates that are authorized by the parties to the agreement. Title to the transit equipment shall not vest in the joint powers agency until the equipment trust certificates are paid.

(b) An agency that finances or refinances transit equipment or transfers federal income tax benefits with respect to transit equipment under subdivision (a) may provide in the agreement to purchase or lease transit equipment any of the following:

(1) A direction that the vendor or lessor shall sell and assign or lease the transit equipment to a bank or trust company, duly authorized to transact business in the state as trustee, for the benefit and security of the equipment trust certificates.

(2) A direction that the trustee shall deliver the transit equipment to one or more designated officers of the entity.

(3) *An* authorization for the joint powers agency to execute and deliver simultaneously therewith an installment purchase agreement or a lease of equipment to the joint powers agency.

(c) *An* agency that finances or refinances transit equipment or transfers federal income tax benefits with respect to transit equipment under subdivision (a) shall do all of the following:

(1) Have each agreement or lease duly acknowledged before a person authorized by law to take acknowledgments of deeds and be acknowledged in the form required for acknowledgment of deeds.

(2) Have each agreement, lease, or equipment trust certificate authorized by resolution of the joint powers agency.

(3) Include in each agreement, lease, or equipment trust certificate any covenants, conditions, or provisions that may be deemed necessary or appropriate to ensure the payment of the equipment trust certificate from legally available sources *of* funds, as specified in the equipment trust certificates.

(4) Provide that the covenants, conditions, and provisions of an agreement, lease, or equipment trust certificate do not conflict with any of the provisions of any trust agreement securing the payment of any bond, note, or certificate of the joint powers agency.

(5) File an executed copy of each agreement, lease, or equipment trust certificate in the office of the Secretary of State, and pay the fee, as set forth in paragraph (3) of subdivision (a) of Section 12195 of the **Government Code**, for each copy filed.

(d) The Secretary of State may charge a fee for the filing of an agreement, lease, or equipment trust certificate under this section. The agreement, lease, or equipment trust certificate shall be accepted for filing only if it expressly states thereon in an appropriate manner that it is filed under this section. The filing constitutes notice of the agreement, lease, or equipment trust certificate to any subsequent judgment creditor or any subsequent purchaser.

(e) Each vehicle purchased or leased under this section shall have the name *of* the owner or lessor plainly marked on both sides thereof followed by the appropriate words "Owner and Lessor" or "Owner and Vendor," as the case may be.

6519. Notwithstanding any other provision of law, the State of California does hereby pledge to, and agree with, the holders of bonds issued by any agency or entity created by a joint exercise of powers agreement by and among two or more cities, counties, or cities and counties, that the state will not change the composition of the issuing agency or entity unless such change in composition is authorized by a majority vote of the legislative body of each such city, county, or city and county, or by a majority vote of the qualified electors of each such city, county, or city and county.

"Change in composition," as used in this section, means the addition of any public agency or person to any agency or entity created by a joint exercise of powers agreement pursuant to this chapter, the deletion of any public agency from any such joint powers agency or entity, or the addition to, or deletion from, the governing body of any such joint powers agency, or entity of any

public official of any member public agency or other public agency, or any other person.

6520. (a) Notwithstanding any other provision of law, the Board of Supervisors of San Diego County and the City Council of the City of San Diego may create by joint powers agreement, the San Diego Courthouse, Jail, and Related Facilities Development Agency, hereinafter referred to as "the agency," which shall have all the powers and duties of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code as well as all the powers of a joint powers agency pursuant to this chapter, with respect to the acquisition, construction, improvement, financing, and operation of a combined courthouse-criminal justice facility, including a parking garage, and other related improvements, hereinafter referred to as "the facility."

(b) The agency shall be governed by a board of directors composed of one city council member and one citizen designated by the San Diego City Council; one supervisor and one citizen designated by the San Diego County Board of Supervisors; two citizens appointed by the presiding judge of the superior court effective during his or her term of presidence; the Sheriff of San Diego County; the president or designee of the San Diego County Bar Association; and one citizen designated by the District Attorney of San Diego County; all of whom shall serve at the pleasure of the appointing power and without further compensation.

(c) The City of San Diego and the County of San Diego shall each have the power of nonconcurrence over any action taken by the board of directors, provided that a motion for reconsideration is made by a member of the board of directors immediately following the vote of the board of directors approving such action, and further provided that the city council or the board of supervisors votes to nullify such action, by a majority vote of its membership, within 30 days.

(d) The county may transfer to the agency county funds in either a Courthouse Temporary Construction Fund or a County Criminal Justice Facility Temporary Construction Fund, or both, to be expended for purposes of the facility.

(e) In addition to those funds, **(1)** the agency's governing body may allot up to 15 percent of the fines and forfeitures received by the City of San Diego pursuant to Section 1463 of the Penal Code from the service area of the downtown courts, as defined by the agency, for expenditure by the agency for the purposes specified in subdivision (a); (2) the City of San Diego and the County of San Diego may allot to the agency any state or federal funds received for purposes of the facility; and (3) the agency may expend any rent, parking fees, or taxes received on leasehold interests in the facility, for the purposes specified in subdivision (a).

6520.1. Notwithstanding any other provision of this code, the Board of Supervisors of Siskiyou County and the city councils of the cities within Siskiyou County may create, by joint powers agreement, the Collier Interpretive and Information Center Agency to construct, improve, finance, lease, maintain, and operate the Randolph E. Collier Safety Roadside Rest Area as an information and safety rest facility and to expand the use of the site into a cultural, tourist, river fisheries, water, natural resource, and aquatic habitat

interpretive center.

6522. Notwithstanding any other provision of this chapter, any state department or agency entering into a joint powers agreement with a federal, county, or city **government** or agency or public district in order to create a joint powers agency, shall ensure that the participation goals specified in Section **16850** and Section **10115** of the Public Contract **Code** and in Article **6** (commencing with Section 999) of Chapter **6** of Division **4** of the Military and Veterans **Code** become a part of the agreement, and shall apply to contracts executed by the joint powers agency.

6523. A joint powers entity that is created pursuant to an agreement entered into, in accordance with this article, by the City of West Sacramento, Reclamation District No. **537,** and Reclamation District No. 900 may exercise the authority granted to reclamation districts under Part **7** (commencing with Section **51200)** and Part **8** (commencing with Section **52100)** of Division **15** of the Water **Code** for the purposes of Sections **12670.2, 12670.3,** and **12670.4** of the Water **Code.**

6523.4. (a) Notwithstanding any other provision of this chapter, the Selma Community Hospital, a private, nonprofit hospital in Fresno County, may enter into a joint powers agreement with one or more of the following public agencies:

(1) The Alta Hospital District.

(2) The Kingsburg Hospital District.

(3) The Sierra-Kings Hospital District.

(b) The joint powers authority created pursuant to subdivision (a) may perform only the following functions:

(1) Engage in joint planning for health care services.

(2) Allocate health care services among the different facilities operated by the hospitals.

(3) Engage in joint purchasing, joint development, and joint ownership of health care delivery and financing programs.

(4) Consolidate or eliminate duplicative administrative, clinical, and medical services.

(5) Engage in joint contracting and negotiations with health plans.

(6) Take cooperative actions in order to provide for the health care needs of the residents of the communities they serve.

(c) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority. The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(d) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

(e) Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions **Code.**

6523.5. Notwithstanding any other provision of this chapter, a private, nonprofit hospital in the County of Contra Costa may enter into a joint powers agreement with a public agency, as defined in Section **6500.**

6523.6. (a) Notwithstanding any other provision of this chapter, a private, nonprofit hospital in the County of Tulare may enter into a joint powers agreement with a public agency, as defined in Section **6500.**

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority. The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than **14** days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(c) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

6523.7. (a) Notwithstanding any other provision of this chapter, a private, nonprofit hospital in the County of Kings may enter into a joint powers agreement with a public agency, as defined in Section **6500.**

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority. The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than **14** days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(c) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

6523.8. (a) Notwithstanding any other provision of this chapter, a nonprofit hospital in the County of Tuolumne may enter into a joint powers agreement with a public agency, as defined in Section **6500.**

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority.

(c) The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(d) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

6523.9. (a) Notwithstanding any other provision of this chapter, a nonprofit hospital in the County of San Diego may enter into a joint powers agreement with any public agency, as defined in Section **6500**.

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority.

(c) The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(d) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

6524. Notwithstanding any other provision of this chapter, a private, nonprofit children's hospital in a county of the third class may enter into a joint powers agreement with any public agency, as defined in Section **6500**.

6525. Notwithstanding any other provision of this chapter, a mutual water company may enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties.

6526. Notwithstanding any other provision of law, any public agency that is a member of the South East Regional Reclamation Authority, the Aliso Water Management Agency, the South Orange County Reclamation Authority, or the San Juan Basin Authority may exercise any power granted to those entities by any of the joint powers agreements creating those entities, whether or not that public agency is a signatory to any of these joint powers agreements granting that power or is otherwise authorized by law to exercise that power, for

the purpose of promoting efficiency in the administration of these joint powers entities.

6527. (a) Notwithstanding any other provision of law, where two or more health care districts have joined together to pool their self-insurance claims or losses, a nonprofit corporation that provides health care services that may be carried out by a health care district may participate in the pool, provided that its participation in an existing joint powers agreement, as authorized by this section, shall be permitted only after the public agency members, or public agency representatives on the governing body of the joint powers entity make a finding, at a public meeting, that the agreement provides both of the following:

(1) The primary activities conducted under the joint powers agreement will be substantially related to and in furtherance of the governmental purposes of the public agency.

(2) The public agency participants will maintain control over the activities conducted under the joint powers agreement through public agency control over governance, management, or ownership of the joint powers authority.

(b) Any public agency or private entity entering into a joint powers agreement under this section shall establish or maintain a reserve fund to be used to pay losses incurred under the agreement. The reserve fund shall contain sufficient moneys to maintain the fund on an actuarially sound basis.

(c) In any risk pooling arrangement created under this section, the aggregate payments made under each program shall not exceed the amount available in the pool established for that program.

(d) A public meeting shall be held prior to the dissolution or termination of any enterprise operating under this section to consider the disposition, division, or distribution of any property acquired as a result of exercise of the joint exercise of powers.

(e) Nothing in this section shall be construed to do any of the following:

(1) Relieve a public benefit corporation that is a health facility from charitable trust obligations.

(2) Exempt such a public benefit corporation from existing law governing joint ventures, or the sale, transfer, lease, exchange, option, conveyance, or other disposition of assets.

(3) Grant any power to any private, nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment.

(4) Permit any entity, other than a private, nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

(5) Permit an agency or entity created pursuant to a joint powers agreement entered into pursuant to this section to act in a manner inconsistent with the laws that apply to public agencies, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) Notwithstanding any other provision of law, the Self-Insurers' Security Fund established pursuant to Article 2.5 (commencing with Section 3740) of Chapter 4 of Part 1 of Division 4 of the Labor **Code** shall owe no duties or obligations to any entity that participates as a party to an agreement authorized pursuant to this section, or to its employees, and shall not be required, under any circumstances, to

assume the worker's compensation liabilities of this entity if it becomes insolvent or otherwise unable to pay those liabilities.

(g) For purposes of this section, "self-insurance claims or losses" includes, but is not limited to, claims or losses incurred pursuant to Chapter 4 (commencing with Section 3700) of Part 1 of Division 4 of the Labor **Code**.

6528. A charter school, including a charter school organized pursuant to Section 47604 of the Education **Code**, may be considered a public agency, as defined in Section **6500**, for the purpose of being eligible for membership in a joint powers agreement for risk-pooling

6529. (a) The Elk Valley Rancheria Tribal Council, as the governing body of the Elk Valley Rancheria, California, a federally recognized Indian tribe, may enter into a joint powers agreement with the County of Del Norte and the City of Crescent City, or both, and shall be deemed to be a public agency for purposes of this chapter.

(b) On and after January 1, 2004, the joint powers authority created pursuant to subdivision (a) shall not have the power to authorize or issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584)) unless the public improvements to be funded by the bonds will be owned and maintained by the authority or one or more of its public agency members, and the revenue streams pledged to repay the bonds derive from the authority or one or more of its public agency members.

6530. (a) Notwithstanding any other provision of law, the Torres Martinez Desert Cahuilla Indians are authorized to enter into a joint powers agreement to participate in the Salton Sea Authority.

(b) On and after January 1, 2002, the Salton Sea Authority shall not have the power to authorize or issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584)) unless the public improvements to be funded by the bonds will be owned and maintained by the authority or one or more of its public agency members, and the revenue streams pledged to repay the bonds derive from the authority or one or more of its public agency members.

6531. (a) The Legislature finds and declares all of the following:

(1) It is in the best interests of communities located within the City of San Diego for the local public agencies that have jurisdiction within the city to form a joint powers agency to provide for the orderly and coordinated acquisition, construction, and development of model school projects. These projects may include the acquisition of land by negotiation or eminent domain, the construction of schools, the construction of recreational facilities or park sites or both, and the construction of replacement and other housing, including market rate, moderate-income, and low-income housing.

(2) The coordinated construction of these projects by

redevelopment agencies, school districts, housing authorities, housing commissions, and the city is of great public benefit and will save public money and time in supplying much needed replacement housing lost when schools are constructed within existing communities.

(3) Legislation is needed to allow redevelopment agencies, school districts, housing authorities, housing commissions, and the city to use their powers to the greatest extent possible to expedite, coordinate, and streamline the construction and eventual operation of such projects.

(b) (1) Notwithstanding any other provision of law, the Redevelopment Agency of the City of San Diego, the Housing Authority of the City of San Diego, the San Diego Housing Commission, the San Diego Unified School District, and the City of San Diego may enter into a joint powers agreement to create and operate a joint powers agency for the development and construction of a model school project located within the City Heights Project Area. The agency created pursuant to this section shall be known as the San Diego Model School Development Agency. The San Diego Model School Development Agency shall have all the powers of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety **Code**, all of the powers of a housing authority pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety **Code**, and all of the powers of the San Diego Unified School District, as well as all the powers of a joint powers agency granted pursuant to this chapter, to acquire property and to construct and improve and finance one or more schools, housing projects, parks, recreational facilities, and any other facilities reasonably necessary for their proper operation. Further, the San Diego Model School Development Agency shall have all of the powers of the City of San Diego pursuant to its charter and state law to acquire property and to finance and operate parks and recreational facilities and any other facilities reasonably necessary for their proper operation.

(2) Notwithstanding paragraph (1), neither the San Diego Model School Development Agency nor the Redevelopment Agency of the City of San Diego shall expend any property tax increment revenues to acquire property, and to construct, improve, and finance a school within the City Heights Project Area.

(3) Nothing in this section shall relieve the San Diego Model School Development Agency or the Redevelopment Agency of the City of San Diego from its obligations to increase, improve, and preserve the community's supply of low- and moderate-income housing, including, but not limited to, the obligation to provide relocation assistance, the obligation to provide replacement housing, the obligation to meet housing production quotas, and the obligation to set aside property tax increment funds for those purposes.

(4) The San Diego Model School Development Agency shall perform any construction activities in accordance with the applicable provisions of the Public Contract **Code**, the Education **Code**, and the Labor **Code** that apply, respectively, to the redevelopment agency, housing authority, housing commission, school district, or city creating the San Diego Model School Development Agency. Funding pursuant to Proposition MM, a local San Diego County bond measure enacted by the voters for the purpose of school construction, shall be used only for the design, development, construction, and financing of school-related facilities and improvements, including schools, as authorized and to the extent authorized under Proposition MM.

(c) Any member of the joint powers agency, including the school district, may, to the extent permitted by law, transfer and

contribute funds to the agency, including bond funds, to be deposited into and to be held in a facility fund to be expended for purposes of the acquisition of property for, and the development and construction of, any school, housing project, or other facility described in this section.

(d) Nothing contained in this section shall preclude the joint powers agency from distributing funds, upon completion of construction, the school, housing project, park, recreational facility, or other facility to a member of the agency to operate the school, housing project, park, or other facility that the member is otherwise authorized to operate. These distribution provisions shall be set forth in the joint powers agreement, if applicable.

(e) The San Diego Model School Development Agency may construct a school in the City Heights Project Area pursuant to Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education **Code.**

(f) The San Diego Model School Development Agency shall establish and enforce, with respect to construction contracts awarded by the joint powers agency, a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor **Code** or shall contract with a third party to operate a labor compliance program containing those requirements. This requirement shall not apply to projects that are subject to a collective bargaining agreement that binds all of the contractors and subcontractors performing work on the project, but nothing shall prevent the joint powers agency from operating a labor compliance program with respect to those projects.

(g) Construction workers employed as apprentices by contractors and subcontractors on contracts awarded by the San Diego Model School Development Agency shall be enrolled in a registered apprenticeship program, approved by the California Apprenticeship Council, that has graduated apprentices in the same craft in each of the preceding five years. This graduation requirement shall be applicable for any craft that was first deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft prior to January 1, 1998. A contractor or subcontractor need not submit contract award information to an apprenticeship program that does not meet the graduation requirements of this subdivision. If no apprenticeship program meets the graduation requirements of this subdivision for a particular craft, the graduation requirements shall not apply for that craft.

6533. (a) The board of directors of the Eastern Water Alliance Joint Powers Agency may grant available funds to a member public agency for the purposes of assisting that member public agency in acquiring water if the board determines that that water supply will benefit the Eastern San Joaquin County Groundwater Basin as a whole and that that member public agency would otherwise be unable to acquire that water. Section 10753.1 of the Water **Code** applies to any groundwater regulation under this section. As used in this section, the term "groundwater" has the same definition as set forth in subdivision (a) of Section 10752 of the Water **Code.**

(b) (1) For the purpose of supplementing the general operating revenues of the joint powers agency, upon the request of the board of directors of the joint powers agency, the Board of Supervisors of San Joaquin County may grant to the joint powers agency funds from the county general fund or Zone 2 of the San Joaquin County Flood Control and Water Conservation District that are available to carry

out any purpose of the joint powers agency for which the county or district is authorized to expend funds.

(2) Nothing in paragraph (1) grants a preference to the joint powers agency over other public agencies for the purposes of receiving funds described in that paragraph.

(c) The joint powers agency shall deposit any county or district funds received pursuant to subdivision (b) in a separate account, and upon request of the county or district, shall demonstrate that all expenditures made from that account are being used only to carry out the powers, projects, and purposes of the joint powers agency and San Joaquin County or Zone 2 of the San Joaquin County Flood Control and Water Conservation District.

(d) Subject to Article XIIID of the California Constitution, the joint powers agency may impose a plan implementation charge, in accordance with this subdivision, on landowners within its boundaries for the property related service received from improved groundwater management and planning, and for improved groundwater levels and availability, provided by the joint powers agency. This plan implementation charge shall be a charge for water subject to the procedures and requirements set forth in subdivisions (a) and (b) of Section 6 of Article XIIID of the California Constitution, as follows:

(1) Each year the board of directors of the joint powers agency may fix a plan implementation charge that may not exceed the annual cost of carrying out the actions financed by the charge. The board of directors may use multiyear budgeting to determine the plan implementation charge for up to five years and adopt a schedule of charges for this time period.

(2) Before imposing the plan implementation charge, the board of directors of the joint powers agency shall identify the parcels of land within the joint powers agency to be benefited by the actions financed by the charge, the need for the plan implementation charge, and the amount of the charge to be imposed on each parcel. The amount of the charge upon any parcel may not exceed the proportional costs of the actions financed by the charge attributable to that parcel. The joint powers agency shall provide written notice of the plan implementation charge and conduct a public hearing as provided in subdivision (a) of Section 6 of Article XIIID of the California Constitution. The joint powers agency may not impose the plan implementation charge if written protests against the charge are presented by a majority of the owners of the identified parcels upon which the charge will be imposed.

(3) (A) The plan implementation charge, at the option of the joint powers agency, may be collected on the tax rolls of the county in the same manner, by the same persons, and at the same time as, together with and not separate from, county ad valorem property taxes. In that event, of the amount collected pursuant to this paragraph, the county auditor may deduct that amount required to reimburse the county for its actual cost of collection.

(B) In lieu of that option, the joint powers agency shall collect plan implementation charges at the same time, together with penalties and interest at the same rates as is prescribed for the collection of county ad valorem property taxes.

(4) The amount of an unpaid plan implementation charge, together with any penalty and interest thereon, shall constitute a lien on that land as of the same time and in the same manner as does the tax lien securing county ad valorem property taxes.

(5) In lieu of a plan implementation charge being imposed on parcels within the boundaries of any individual member public agency of the joint powers agency, any member of the joint powers agency may

determine by resolution to make payment to the joint powers agency of funds in an amount equal to the amount that would be raised by imposition of the plan implementation charge within the boundaries of that member, to be paid at the same time that the plan implementation charge would be collected if imposed.

(e) For the purposes of this section, "joint powers agency" means the Eastern Water Alliance Joint Powers Agency.

(f) For the purposes of this section, "Eastern San Joaquin County Groundwater Basin" means the Eastern San Joaquin County Basin described on pages **38** and **39** of the Department of Water Resources' Bulletin No. **118-80**.

6534. (a) This section shall be known, and may be cited, as the California Prison Inmate Health Service Reform Act.

(b) The Department of Corrections may enter into joint powers agreements under this chapter with one or more health care districts established in accordance with Division 23 (commencing with Section 32000) of the Health and Safety **Code,** in order to establish regional inmate health service joint powers agencies.

(c) Inmate health service joint powers authorities may be utilized for any purpose related to the provision, acquisition, or coordination of inmate health care services, including, but not limited to, all of the following:

(1) The provision of district hospital-based surgical, diagnostic, emergency, trauma, acute care, skilled nursing, long-term, and inpatient psychiatric care.

(2) Health care utilization review services.

(3) Health facility management consultation services.

(4) Health care contract design, negotiation, management, and related consultation services.

(5) Health care quality monitoring, management, and oversight consulting services.

(6) Physician and health care staff recruitment services.

(7) The design, construction, and operation of dedicated, secure, community-based health care facilities for the provision of inmate health care services.

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 66016-66018.5

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 65100-65106

65100. There is in each city and county a planning agency with the powers necessary to carry out the purposes of this title. The legislative body of each city and county shall by ordinance assign the functions of the planning agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the legislative body itself, or any combination thereof, as it deems appropriate and necessary. In the absence of an assignment, the legislative body shall carry out all the functions of the planning agency.

65101. (a) The legislative body may create one or more planning commissions each of which shall report directly to the legislative body. The legislative body shall specify the membership of the commission or commissions. In any event, each planning commission shall consist of at least five members, all of whom shall act in the public interest. If it creates more than one planning commission, the legislative body shall prescribe the issues, responsibilities, or geographic jurisdiction assigned to each commission. If a development project affects the jurisdiction of more than one planning commission, the legislative body shall designate the commission which shall hear the entire development project.

(b) Two or more legislative bodies may:

(1) Create a joint area planning agency, planning commission, or advisory agency for all or prescribed portions of their cities or counties which shall exercise those powers and perform those duties under this title that the legislative bodies delegate to it.

(2) Authorize their planning agencies, or any components of them, to meet jointly to coordinate their work, conduct studies, develop plans, hold hearings, or jointly exercise any power or perform any duty common to them.

65101.1. The Hoopa Valley Business Council, as the governing body of the Hoopa Valley Indian Tribe, may participate as a legislative body, pursuant to subdivision (b) of Section **65101** on the Humboldt County Association of Governments and for that purpose may enter into a joint powers agreement with the parties thereto and shall be deemed to be a public agency for purposes of Article **1** (commencing with Section 6500) of Chapter 5 of Division 7 of Title **1**. The Legislature finds and declares that the unique circumstances of Humboldt County necessitate this special law.

65102. A legislative body may establish for its planning agency any rules, procedures, or standards which do not conflict with state or federal laws.

65103. Each planning agency shall perform all of the following functions:

(a) Prepare, periodically review, and revise, as necessary, the general plan.

(b) Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.

(c) Annually review the capital improvement program of the city or county and the local public works projects of other local agencies for their consistency with the general plan, pursuant to Article 7 (commencing with Section 65400).

(d) Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it.

(e) Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.

(f) Promote the coordination of local plans and programs with the plans and programs of other public agencies.

(g) Perform other functions as the legislative body provides, including conducting studies and preparing plans other than those required or authorized by this title.

65104. The legislative body shall provide the funds, equipment, and accommodations necessary or appropriate for the work of the planning agency. If the legislative body, including that of a charter city, establishes any fees to support the work of the planning agency, the fees shall not exceed the reasonable cost of providing the service for which the fee is charged. The legislative body shall impose the fees pursuant to Section **66016**.

65105. In the performance of their functions, planning agency personnel may enter upon any land and make examinations and surveys, provided that the entries, examinations, and surveys do not interfere with the use of the land by those persons lawfully entitled to the possession thereof.

65106. Upon request all public officials shall furnish to the planning agency within a reasonable time any available information as may be required for the work of the planning agency.

Westlaw.

West's Ann.Cal.Gov.Code § 65584

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Effective: January **01, 2004**

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 7. Planning and Land Use (Refs & Annos)
Division 1. Planning and Zoning (Refs & Annos)
Chapter 3. Local Planning (Refs & Annos)
Article 10.6. Housing Elements (Refs & Annos)

§ 65584. Share **of** city or county **of** regional housing needs; determination and distribution; revision

(a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data. take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations. or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties that already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans. and in consultation with each council of governments, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. **As** part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. **As** part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The council of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division **7** of Title 1, or the governing body of a

subregional agency established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility,

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). If the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c)(1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's deterinination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the. department. as the case may be. shall accept the proposed revision. modify its earlier determination, or indicate, based upon available data and accepted planning methodology. why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the deterinination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments. recommendations, available data, accepted planning methodology, and local geological and topographical restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. **If** the council of governments or the department grants a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount that will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department. whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a).

(6) The housing element shall contain an analysis of the factors and circumstances. with all supporting data. justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d)(1) In the event an incorporation of a new city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under this section, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments. to consider the facts, data. and methodology presented by both parties and make the revised determination. The revised determination shall be made within one year of the incorporation of the new city based upon the methodology described in subdivision (a) and shall reallocate a portion of the affected county's share of regional housing needs to the new city. The revised determination shall neither reduce the total regional housing need nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.

(2) Except as provided in paragraph (3), any ordinance, policy, or standard of a city or county that directly limits, by number. the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(3) Paragraph (2) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) **A** fee may be charged to interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 *to* 7 days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

CREDIT(S)

(Added by Stats.1980, c. 1143, p. 3697, § 3. Amended by Stats.1984, c. 1684, § 1; Stats.1989, c. 1451, § 2; Stats.1990, c. 1441 (S.B.2274), § 4; Stats.1998, c. 796 (A.B.438), § 4; Stats.2001, c. 159 (S.B.662), § 121;

West's Ann.Cal.Gov.Code § 65584

Stats.2003. c. 760 (A.B.668), § 1.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update
1998 Legislation

For statement of legislative intent of Stats.1998. c.796, see Government Code § 65400.

2001 Legislation

Subordination of legislation by Stats.2001. c. 159 (S.B.662). to other 2001 legislation, see Historical and Statutory Notes tinder Business and Professions Code § 27.

1997 Main Volume

Section 5 of Stats. 1989, c. 1451, provides:

"Section 3.5 of this bill incorporates amendments to Section 62384 of the Government Code [Section 3 amends Section 65584] proposed by both this bill and SB 966 [vetoed]. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 65584 of the Government Code, and (3) this bill is enacted after SB 966, in which case Section 2 of this bill shall not become operative."

Amendment of this section by § 4.5 of Stats.1990, c. 1441, failed to become operative under the provisions of § 9 of that Act.

CROSS REFERENCES

Housing for persons of low income and persons and families of moderate income, use of tax allocations, see Government Code § 8191.

LAW REVIEW AND JOURNAL COMMENTARIES

In defense of inclusionary zoning: Successfully creating affordable housing. 36 U.S.F.L.Rev. 971 (2002).

Does the Costa-Hawkins Act prohibit local inclusionary zoning programs? Nadia I. El Mallakh, **89** Cal.L.Rev. 1847 (December 2001).

Why our fair share housing Jaws fail. Ben Field, Santa Clara L.Rev. 35 (1993).

LIBRARY REFERENCES

1997 Main Volume

Planning For Affordable Housing: What Do the 90s Hold. 1 CEB Land Use Forum 9.
Significant new state legislation enacted in 1990. CEB Real Prop L Rep Vol. 14 No. 2 p 45.

RESEARCH REFERENCES

Encyclopedias

West's Ann.Cal.Gov.Code § 65584

CA Jur. 3d Zoning and Other Land Controls § 29, Housing Element Generally.

CA Jur. 3d Zoning and Other Land Controls § 59. Administration of General Plans.

Treatises and Practice Aids

Miller and Starr California Real Estate § 25:177. Provisions Regarding the Housing Element

NOTES OF DECISIONS

1. Existing and projected housing needs

Determination of a locality's share of regional housing needs by a council of governments must include both the existing and projected housing needs of the locality. 70 Ops.Atty.Gen. 231, 9-29-87.

2. Availability of sites

As regards determination of a locality's share of regional housing needs by a council of governments, the availability of suitable housing sites must be considered based not only upon existing zoning ordinances and land use restrictions of the locality, but also upon the potential for increased residential development under alternative zoning ordinances and land use restrictions. 70 Ops.Atty.Gen. 231, 9-29-87.

3. Income classifications

Income categories of Sections 6910-6932 of Title 25 of the California Administrative Code must be used by a council of governments when determining a locality's share of regional housing needs. 70 Ops.Atty.Gen. 231, 9-29-87.

4. Review

In determining whether local open space ordinance accommodated regional housing interests, trial court was not required to consider cumulative effect of ordinance and town's other land use restrictions. Northwood Homes, Inc. v. Town of Moraga (App. 1 Dist. 1989) 265 Cal.Rptr. 363, 216 Cal.App.3d 1197. Zoning And Planning ⚿ 76

Evidence was sufficient to establish that local open space ordinance had only minimal effect on regional housing supply in determining whether ordinance accommodated regional housing interests; evidence indicated that ordinance would result in reduction of only 113 housing units. Northwood Homes, Inc. v. Town of Moraga (App. 1 Dist. 1989) 265 Cal.Rptr. 363, 216 Cal.App.3d 1197. Zoning And Planning ⚿ 647.1

West's Ann. Cal. Gov. Code § 65584, **CA GOVT § 65584**

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West's Ann.Cal.Gov.Code § 65584

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West's Ann.Cal.Gov.Code § 65584.1

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Title 7. Planning and Land Use (Refs & Annos)
Division 1. Planning and Zoning (Refs & Annos)
Chapter 3. Local Planning (Refs & Annos)
Article 10.6. Housing Elements (Refs & Annos)

§ 65584.1. Costs in distributing regional housing needs; fees charged to local governments

Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations under this article. A city. county. or city and county may charge a fee. including. but not limited to, a fee pursuant to Section 65104 to support the work of the planning agency pursuant to this article, and to reimburse it for the cost of any fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose any fee pursuant to Section 66016. This section is declaratory of existing law.

CREDIT(S)

(Added by Stats.2004, c. 227 (S.B.1102), § 58, eff. Aug. 16, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update
2004 Legislation

Section 109 of Stats.2004, c. 227 (S.B.1102), provides:

For uncodified sections and urgency effective provisions relating to Stats.2004, c. 227 (S.B.1102), see Historical and Statutory Notes under Business and Professions Code § 352.

West's Ann. Cal. Gov. Code § 65584.1, **CA GOVT § 65584.1**

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West's Ann.Cal.Gov.Code § 65584.2

Effective: August 16, 2004

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Government Code (Refs & Annos)
Title 7. Planning and Land Use (Refs & Annos)
Division 1. Planning and Zoning (Refs & Annos)
Chapter 3. Local Planning (Refs & Annos)
Article 10.6. Housing Elements (Refs & Annos)

→ § 65584.2. **Share of regional housing need; review or appeal**

A local government may, but is not required to, conduct a review or appeal regarding allocation data provided by the department or the council of governments pertaining the locality's share of the regional housing need or the submittal of data or information for a proposed allocation. as permitted by this article.

CREDIT(S) (Added by Stats.2004. c. 227 (S.B.1102), § 59. eff. Aug. 16. 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update
2004 Legislation

For uncodified sections and urgency effective provisions relating to Stats.2004, c. 227 (S.B.1102), see Historical and Statutory Notes under Business and Professions Code § 352.

West's Ann. Cal. Gov. Code § 65584.2, **CA GOVT** § 65584.2

Current with urgency legislation through all 2004 laws and propositions

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CALIFORNIA **CODES**
HEALTH AND **SAFETY CODE**
SECTION 33670-33679

33670. Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid to the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after that effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the assessed valuation of the taxable property in the project on the effective date); and

(b) Except as provided in subdivision (e) or in Section 33492.15, that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in that project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid.

(c) In any redevelopment project in which taxes have been divided pursuant to this section prior to 1968, located within any county with total assessed valuation subject to general property taxes for the 1967-68 fiscal year between two billion dollars ($2,000,000,000) and two billion one hundred million dollars ($2,100,000,000), if the total assessed valuation of taxable property within the redevelopment project for the 1967-68 fiscal year was reduced, the total sum of the assessed value of taxable property used as the basis for apportionment of taxes under subdivision (a) shall be reduced by 10 percent for the 1968-69 fiscal year and fiscal years thereafter.

(d) For the purposes of this section, taxes shall not include taxes from the supplemental assessment roll levied pursuant to

Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code for the 1983-84 fiscal year.

(e) That portion of the taxes in excess of the amount identified in subdivision (a) which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This subdivision shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

33678. (a) This section implements and fulfills the intent of this article and of Article XIIIB and Section **16** of Article XVI of the California Constitution. The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of Section **33670** for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for redevelopment activity, as defined in subdivision (b) of this section, shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning or for the purposes of Article XIIIB of the California Constitution, nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject **to** limitation of, any other public body within the meaning or for purposes of Article XIIIB **of** the California Constitution or any statutory provision enacted in implementation of Article XIIIB. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIIIB of the California Constitution.

(b) As used in this section, "redevelopment activity" means either of the following:

(1) Redevelopment meeting all of the following criteria:

(A) Is redevelopment as prescribed in Sections **33020** and **33021**.

(B) Primarily benefits the project area.

(C) None of the funds are used for the purpose of paying for employee or contractual services of any local governmental agency unless these services are directly related to the purpose of Sections **33020** and **33021** and the powers established in this part.

(2) Payments authorized by Section **33607.5**.

(c) Should any law hereafter enacted, without a vote of the electorate, confer taxing power upon an agency, the exercise of that power by the agency in any fiscal year shall be deemed a transfer of financial responsibility from the community to the agency for that fiscal year within the meaning of subdivision (a) of Section **3** of Article XIIIB of the California Constitution.

*59 Cal. App. 4th 382, *; 69 Cal. Rptr. 2d 231;*
*1997 Cal. App. LEXIS 948, **; 97 Cal. Daily Op. Service 8821*

KATHLEEN CONNELL, as Controller, etc., et al., Petitioners, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; SANTA MARGARITA WATER DISTRICT et al., Real Parties in Interest.

No. C024295.

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

59 Cal. App. 4th 382; 69 Cal. Rptr. 2d 231; 1997 Cal. App. LEXIS 948; 97 Cal. Daily Op. Service 8821; 97 Daily Journal DAR 14255

November 20, 1997, Decided

SUBSEQUENT HISTORY: [1]**

Review Denied February 25, 1998.

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Sacramento County. Super. Ct. Nos. CV347181, CV357155, CV357156, CV357950. James T. Ford, Judge.

DISPOSITION: Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant state challenged a judgment of the Superior Court of Sacramento County (California), which granted petitions for writ of mandate brought by real parties in interest, water districts. The dispute was whether a statewide regulatory amendment, increasing the level of purity of reclaimed wastewater, constituted a state-mandated program for which real parties in interest were entitled to reimbursement from appellant.

OVERVIEW: The trial court determined that real parties in interest, water districts, were entitled to reimbursement from appellant state for a state-mandated program increasing the purity of reclaimed wastewater. The court concluded the judgment was interlocutory but treated it as a writ petition. The court found that the issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. The court found that taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts if the decision was incorrect. Therefore, the court concluded that even assuming collateral estoppel was present that it should be disregarded pursuant to the public interest exception, insofar as appellant's contentions presented questions of law. The court concluded that the real parties in interest were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the regulatory amendment.

OUTCOME: The court directed the trial court to vacate its judgment and enter a new

judgment denying real parties in interest, water districts' petitions. The court concluded the real parties in interest's authority to levy fees defeated their claim of a reimbursable mandate, and appellant state was not collaterally estopped from raising the matter.

CORE TERMS: levy, water, state-mandated, local agency, collateral estoppel, wastewater, reimbursement, mandated, reclaimed, reimbursable, statewide, public interest exception, sufficient to pay, irrigation, test claim, regulations, new program, school district, collaterally estopped, local agencies, reasonably available, appropriation, appropriated, subvention, purity, higher level of service, judicial review, question of law, costs mandated, disinfected

LexisNexis(R) Headnotes ◆ Hide Headnotes

Constitutional Law > State Constitutional Operation & Atnendment

HN1 See Cal. Const. art. XIII B, § *6.*

Governments > State & Territorial Governments > Water Rights

HN2 See Cal. Water Code § 13521.

Civil Procedure > Appeals > Appellate Jurisdiction > Final Judgment Rule

HN3 An appealable judgment or order is a jurisdictional prerequisite to an appeal. Cal. Civ. Proc. Code § 904.1. More Like This Headnote

Civil Procedure > Appeals > Appellate Jurisdiction > Interlocutory Orders

HN4 An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. More Like This Headnote

Constitutional Law > Separation of Powers

HN5 A court violates the separation of powers doctrine if it purports to compel the legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. More Like This Headnote

Civil Procedure > Appeals > Appellate Jurisdiction > Interlocutory Orders

HN6 Treating an appeal as a writ petition is an authorized means for obtaining review of interlocutory judgments. More Like This Headnote

Civil Procedure > Remedies > Extraordinary Writs

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN7 In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. More Like This Headnote

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

HN8 Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. Even if the formal prerequisites for collateral estoppel are present, the public-interest exception governs. More Like This Headnote

Civil Procedure > Preclusion & Effect of Judgments > Res Judicata

HN9 Of course, res judicata and the rule of final judgments bar the court from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. However, if the issues presented in an action are not limited to the validity of any such finally adjudicated individual claims but encompass the question of defendants' subvention obligations in general, the res judicata does not bar the court. More Like This Headnote

Tax Law > State & Local Tax > Administration & Proceedings

Governments > Local Governments > Duties & Powers

Governments > Public Improvements > Public Improvements Generally

HN10 See Cal. Rev. &Tax. Code § 2253.2.

Governments > Public Improvements > Public Improvements Generally

Constitutional Law > State Constitutional Operation & Amendment

HN11 Cal. Const. art. XIII B, § 6 requires subvention only when the costs in question can be recovered solely from tax revenues. Cal. Gov't Code § 17556(d) effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. More Like This Headnote

Governments > Public Improvements > Public Improvements Generally

Governments > State &Territorial Governments > Water Rights

HN12 See Cal. Water Code § 35470.

Governments > Legislation > Interpretation

HN13 In construing statutes, the court's primary task is to determine the lawmakers' intent, To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the legislature. More Like This Headnote

Governments > Local Governments > Duties & Powers

HN14 The legal meaning of "authority" includes the right to exercise powers. The lay meaning of "authority" includes the power or right to give commands or take action. More Like This Headnote

Governments > Public Improvements > Public Improvements Generally

Governments > State & Territorial Governments > Police Power

HN15 The plain language of Cal. Rev. & Tax. Code § 2253.2 precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program. More Like This Headnote

◆ Show Headnotes / Syllabus

COUNSEL:

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

JUDGES: Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.

OPINIONBY: SIMS

OPINION: [*385]

SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (Cal. Const., art. XIII B, § 6 (hereafter, section 6); n l Gov. Code, § 17500 et seq.; former Rev. & Tax. Code, § 2201 **[**2]** et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting **[*386]** petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. n2 Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim--former Revenue and Taxation Code section 2207--was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' **[**3]** authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n l HN1 Section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [P] (a) Legislative mandates requested by the local agency affected; [P] (b) Legislation defining a new crime or changing an existing definition of a crime; or [P] (c) Legislative mandates enacted 'prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." **[*4]**

n2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of Court, rule 213 (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

FACTUAL AND PROCEDURAL BACKGROUND

In 1975, the State Department of Health Services (DHS) adopted regulations (Cal. Code Regs., tit. 22, § 60301- 60357) implementing HN2 Water Code section 13521, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." Section 60313 n3 of title 22 of the California Code of **[**5]** Regulations prescribed the level of purity required for reclaimed water to be used for landscape irrigation.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n3 California Code of Regulations, title 22, section 60313, initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed." (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[*387]**

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water **[**6]** Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system--the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of $ 17 million.

In September 1978, DHS amended the regulations. The amendment to California Code of Regulations, title 22, section 60313 n4 increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n4 Section 60313 of California Code of Regulations, title 22, as amended, provides: "(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not

exceed 240 per 100 milliliters in any two consecutive samples.

"(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample."

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[**7] [*388]**

On October 1, 1982, SMWD filed a "test claim" n5 with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231, n6 which required reimbursement to local agencies for costs mandated by the state (see now Gov. Code, § 17561 n7), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b) n8 defining "costs mandated by the state." (See now Gov. Code, § 17514. n9) The test claim also cited section 6 (fn. 1, *ante).*

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n5 At the time in question, "test claim" meant "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Former Rev. &Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) "Estimated claims" and "reimbursement claims" were used to make specific demand against an appropriation made for the purpose of paying such claims. *(Ibid.)*

A similar structure, distinguishing between "test claims" and various "reimbursement claims" or "entitlement claims" continues presently in Government Code sections 17521- 17522.

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. *(Ibid.)***[**8]**

n6 Former Revenue and Taxation Code section 2231 provided in part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207. . . ." (Stats. 1982, ch. 1586, § 3, p. 6264.)
n7 Government Code section 17561 provides in part: "(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in Section 17514. . . ."
n8 Former Revenue and Taxation Code section 2207 provided in part: " 'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [P] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [P] (b) Any executive order issued after January 1, 1973, which mandates a new program . . . ." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning "(c) Any executive order issued after January 1, 1973, which (i) implements

or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [P] . . . [P] . . . (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.) Since these subdivisions were not invoked, we have no need to consider them. **[**9]**

n9 Government Code section 17514 provides: " 'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 . . . "

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[*389]**

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; Gov. Code, § 17557.) **[**10]**

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255, n10 submitted to the Legislature a statewide cost estimate of $ 14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n10 Former Revenue and Taxation Code section 2255 provided: "At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement. . . . Immediately on receipt of such report a local governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article." (Stats. 1980, ch. 1256, § 20, p. 4255.)

The current provision is contained in Government Code section 17600, which provides: "At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement."

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[**11]**

In 1985, the Legislature included an appropriation of almost $ 14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including $ 945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. The petition sought an order directing (1)the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state' " and (2) the State Treasurer to pay the Controller's warrant. **[*390]**

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in *County of Los Angeles v. State* **[**12]** *of California* (1987) 43 Cal. 3d 46, 56 [233 Cal. Rptr. 38, 729 P.2d 202].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 **[**13]** (fn. 8, *ante),* defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's **[*391]** decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the **[**14]** Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments (Former Rev. &Tax. Code, § 2253.2, subd. (b)(4); n11 Stats. 1982, ch. 734, §

10, p. 2916; Gov. Code, § 17556 n12) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level **[**15]** of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: "(b) The Board of Control shall not find a reimbursable mandate . . . in any claim submitted by a local agency . . . if, after a hearing, the board finds that: [P] . . . [P] (4) The local agency . . . has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)

n12 Government Code section 17556 provides in part: "The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [P] . . . [P] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[**16]**

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) **[*392]** the state mandate is a program for which reimbursement is due under *County of Los Angeles v. State of California, supra,* 43 Cal. 3d 46; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

DISCUSSION

I *Appealability*

CA(1a)↑ (1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without **[**17]** disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in

the state budget n13 (*Carrnel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal. App. 3d 521, 538-541 [234 Cal. Rptr. 795])--a determination requiring an evidentiary hearing which was not held--we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not decide the propriety of the remedy sought by the Districts.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[**18]** HN3

CA(2) **(2)** An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 13-14, pp. 72-73.)

CA(3) **(3)** HN4 An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (*tyon v. Goss* (1942) 19 Cal. 2d 659, 669-670 [123 P.2d 11].)

CA(1b) **(lb)** In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. **[*393]**

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and **[**19]** reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure--which would duplicate steps previously undertaken in this case without success. Nor does anything in the judgment call for issuance or payment of warrants. *Carmel Valley Fire Protection Dist.* v. *State of* **[**20]** *California, supra,* 190 Cal. App. 3d 521--a case discussed in the trial court and on appeal--recognized that HN5 a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such

violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.) Thus, the Districts' view of this matter as an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.)* Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (*Morehart* **[*394]** v. *County of Santa Barbara* (1994) 7 Cal. 4th 725, 743-744 [29 Cal. Rptr. 2d 804, 872 P.2d 143] HN6[treating appeal as writ petition is authorized means for obtaining **[**21]** review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs--which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

11. *Standard of Review*

CA(4)(4) HN7In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans* **[**22]** *v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal. 3d 398, 407 [216 Cal. Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

III. *Collateral Estoppel*

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

CA(5)(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant **[**23]** to the public interest exception. **[*395]**

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case

in *City of Sacramento v. State of California* (1990) *50* Cal. 3d 51, 64-65 [266 Cal. Rptr. 139, 785 P.2d 522] *(Sacramento II)*. There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *Sacramento II* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) *156* Cal. App. 3d 182 [203 Cal. Rptr. 258] *(Sacramento I).)* On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs. The trial court granted summary judgment for the state on the **[**24]** grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. *(Sacramento 11, supra, 50* Cal. 3d at p. 64.) The Supreme Court said: HN8"Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '. . . But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. . . .' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. **[**25]** Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies. . . ." *(Sacramento 11, supra, 50* Cal. 3d at p. 64, original italics.) **[*396]**

The Supreme Court also rejected the argument that res judicata applied. HN9"Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78." *(Sacramento II, supra,* 50 Cal. 3d **[**26]** at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II,* the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., Gov. Code, § 17500. **[**27]** n14) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450 [20 Cal. Rptr. 321, 369 **[*397]** P.2d 9371.) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (Gov. Code, § 17559; former Rev. &Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

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n14 Government Code section 17500 provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies . . . for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 . . . . The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [P] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 . . . and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 . . . ."

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[**28]**

In light of the Supreme Court's decision in *Sacramento II,* we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist.* v. *State of California, supra,* 190 Cal. App. 3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

IV. *Authority to Levy Fees*

CA(6a) **(6a)** Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former HN10 Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, in any claim submitted by a local agency or school **[**29]** district, pursuant to subdivision (a) of Section 2218, if, after a

hearing, the board finds that:

"

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." n15 (Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.)

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n15 This case presents no issue concerning any distinction between "service charges, fees or assessment," as used in the statute. The parties on appeal frame the issue in terms of the authority to levy "fees." We adopt their usage for the sake of simplicity.

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The same provision is currently contained in Government Code section 17556. n16

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n16 Government Code section 17556 provides in part: "The commission [formerly the Board] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [P] . . . [P] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. . . ."

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The facial constitutionality of this provision was upheld in *County of Fresno v. State of California* (1991) 53 Cal. 3d 482 [280 Cal. Rptr. 92, 808 P.2d 235]. The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante),* which contains no exclusion of reimbursement where the local agency has authority to levy fees. *HN11* Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. (53 Cal. 3d at p. 487.) Government Code section 17556, subdivision (d), "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound." (*County of Fresno v. State of California, supra,* 53 Cal. 3d at p. 487.)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as *HN12* Water Code section 35470, which provides: "Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, **[**31]** make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs

involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had **[*399]** "sufficient" authority. They claim this issue was a mixed question of law and fact, **[**32]** and appellants should be collaterally estopped from raising it. n17

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n17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants' brief. We therefore disregard the assertion.

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We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where Water Code section 35470 was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water unmarketable and would encourage users to **[**33]** switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in Water Code section 13512, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "DISCUSSION: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge . . . ." The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued **[**34]** existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical **[*400]** phrase, 'sufficient to pay for the mandated costs,' that's the condition with *[sic]* which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it

through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay . . . ."

We note the record also reflects comments by SMWD's counsel to the trial court, that its customers were **[**35]** paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period." **[**36]**

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. HN13↑ CA(7)↑**(7)** In construing statutes, our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal. 3d 711, 724 [257 Cal. Rptr. 708, 771 P.2d 406].) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear **[*401]** and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . ." (*Lungren v. Deukmejian* (1988) 45 Cal. 3d 727, 735 [248 Cal. Rptr. 115, 755 P.2d 2991.)

CA(6b)↑**(6b)** Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. HN14↑ **[**37]** The legal meaning of "authority" includes the "Right to exercise powers; . . ." (Black's Law Dict. (6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action . . . ." (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, HN15↑ the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

[38]**

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. Water Code section 35470 authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD "could not" **[*402]** increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only **[**39]** that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and Taxation Code section 2253.2 (now Gov. Code, § 17556) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

CA(8)**(8)** Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (*Sacramento II, supra,* 50 Cal. 3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local **[**40]** agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any such argument and in any event do not base our decision **[**41]** on that ground. **[*403]**

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996], the authority of local agencies to recover costs for many services will be impacted by

the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute **[**42]** a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

DISPOSITION

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.

The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998.

PROOF OF SERVICE

I, Cynthia Pacheco, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 865 South Figueroa Street, 29th Floor, Los Angeles, California 90017. On January 10, 2005, I served a copy of the within document(s):

Authorities Cited in Rebuttal Brief of Southern California Association of Governments, Sacramento Area Council of Governments, Association of Bay Area Governments, California Association of Councils of Governments, and San Diego Association of Governments

☒ (By Federal Express) I placed the document(s) listed above in a sealed Federal Express envelope affixed with a pre-paid air bill, and caused the envelope to be delivered to a Federal Express agency for delivery as set forth below.

Eric D. Feller, Esq.
Commission State Mandates
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Sacramento, CA 95814
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 10, 2005, at Los Angeles, California.

Cynthia Pacheco